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Current Topics.

Mr. Augustine Birrell, K.C.

A LARGE and representative assembly met last week to do honour to Mr. BIRRELL on the occasion of his seventy-ninth birthday. Apart from such a quasi-official certificate of his age, we should scarcely have believed that the accomplished man of letters who has won for himself troops of friends by his volumes of essays was approaching four-score years. But Mr. BIRRELL is one of those happily-endowed people who never grow old: his sprightly wit and vigour of statement continue unabated despite the passing years. We have spoken of him as an accomplished man of letters, and this he undoubtedly is; but in this place we like to think of him also as a distinguished member of the legal profession. If we are not mistaken, he spent some time in a solicitor's office before coming to the Bar, to which he was called by the Inner Temple in 1875. As a Chancery junior he enjoyed a fair practice, lighting up, as only he could, the driest of dry subjects by happy scintillations of wit. On taking silk he attached himself to Mr. Justice ROMER'S court, but by this time the call of politics was becoming for him more and more urgent, and, like one of his own heroes, EDMUND BURKE, he "to party gave up what was meant for mankind." Most of his books bear traces of his legal training, this being evident not only in the titles he chose for several of them—"Obiter Dicta," "Res Judicatæ," and "More Obiter Dicta"—but also by the many capital stories of notable judges and practitioners interwoven with supreme skill into his text. One of the counsels he gave on one occasion to a body of law students is not only happily put, but contains the soundest advice and is well worth reproducing: "Get at the facts and most cases will decide themselves. It is painful to think how much subtle law has been manufactured upon a purely imaginary state of facts." As he said in the course of the same address: "Nowadays judges are perfectly free to get at the real facts of any case that comes before them. When they have got at these facts, or at all events thought they have got at them, or say they have got at them without thinking so, it is amazing how seldom any law is left." How tersely and wittily expressed, but how profoundly true!

The Bar Council Meeting.

ONCE AGAIN the Bar of England has shown that it takes a minimum of interest in the annual meeting convened to hear and discuss the report submitted to it by the Bar Council. Save for some remarks by Sir THOMAS HUGHES, K.C., the chairman of the Council, in favour of the simplification of proceedings by and against the Crown—a matter which has been a good deal under discussion in recent months—it cannot be said that anything very practical is likely to result from what took place at the meeting. The Attorney-General, who presided on this occasion for the first time as head of the Bar, made some reference to the invitation received by the Council from the French and Belgian Bars to co-operate in the formation of an International Federation of Bars—an invitation which the Council has not seen its way to accept. The Attorney-General added that this decision was not arrived at owing to any lack of sympathy with the objects of such a body; on the contrary, they were always glad to meet and interchange views with their French and Belgian *confrères*. Being unable, however, to meet their foreign friends in a corporate capacity, the Council had taken the characteristically English step of suggesting to the Inns of Court that they might ask distinguished lawyers of France and Belgium to dine with them on suitable occasions. Great is the faith of the average Englishman in the potentialities of a good dinner. Lord STOWELL declared long ago that it "lubricates business"; it does this, and it is furthermore the orthodox method of signalising notable events; so much so that DOUGLAS JERROLD said on one occasion that when the final collapse of the world occurs, a party of Englishmen will be found gathered together in some corner of the ruins celebrating the event by a dinner.. If the Inns of Court act on the suggestion of the Bar Council in this matter, probably more will be effected in bringing the French, the Belgian and the English Bars into closer and more sympathetic relations than could be accomplished through the medium of an International Federation of Advocates. At all events, it is worth a trial.

An Innkeeper's Liability for Infection of Guest.

IN AN ACTION before Judge CRAWFORD against the owner of an hotel on Canvey Island, for damages arising from the infection of a child staying there from scarlet fever, alleged to be caught from the cook's daughter, the learned judge stated that the cause of action was new to him, counsel for the plaintiff stated that he could find no relevant authorities, and counsel for the defence had dredged up only a case from Iowa. All agreed that the point to be decided was of great importance to the public, a vast number of whom stay at inns when they take their holidays. Comment may perhaps be made that good arguments could have been based on *Maclenan* v. *Segar*, 1917, 2 K.B. 325, which lays down that an innkeeper impliedly warrants that his premises are, for the purposes of the personal use of the guest, as safe as

reasonable skill and care can make them, but not against latent defects which could not have been discovered by reasonable skill and care. In the above case the lack of safety arose from the presence of the scarlet fever microbe, and the test would have been, assuming the hotel was an inn, whether the landlord knew, or by reasonable skill and diligence should have known about it. In the Iowa case, no doubt *Gilbert* v. *Hoffman*, 1885, 66 Iowa 263, REED, J., applied the same law as that laid down in *Maclenan* v. *Segar*, holding that the landlord, who knew of the small-pox and deliberately concealed it from his guests when they came, was fully liable. And, so far as cases between landlord and tenant may be relevant, there is, of course, plenty of authority. In *Collins* v. *Hopkins*, 1923, 2 K.B. 617, MCCARDIE, J., held that a house in which a person had recently suffered from consumption was not reasonably fit for habitation as a furnished house within the implied warranty, and it is of interest to note that, although not in a position to over-rule *Sarson* v. *Roberts*, 1895, 2 Q.B. 393, and *Humphreys* v. *Miller*, 1917, 2 K.B. 122 (the latter to the effect that an incoming tenant does not warrant himself free from leprosy) he left no doubt of his disapproval of them, see p. 620. The facts in *Sarson* v. *Roberts* somewhat resembled those in the above case, for scarlet fever was caught from a child in the house, but the house was a lodging-house and not an inn, and the child contracted the fever after instead of before the letting. Judge CRAWFORD dismissed the claim for damages, but the reasons given are not reported. As to penalties for knowingly letting an infected room, in an inn or elsewhere, see the P.H.A., 1875, ss. 128-9, and P.H., (London) A., 1891, ss. 63-4, also the adoptive Infectious Diseases Prevention Act, 1890, s. 7.

An American Lady's Tomb.

A MRS. PARRISH, of Upper Grosvenor-street, W., but stated to be domiciled in Pennsylvania, left over £15,000, and in her will gave £1,000 in trust for the upkeep of her tomb, the ventilating doors of the mausoleum to be opened thrice a week, the interior to be sponged out twice a month, with other elaborate directions. The newspaper report of the will does not furnish certain details of legal interest, namely, whether the tomb is in England or in Pennsylvania, and what the law of the latter State rules as to such a bequest. Our own law is, of course, clear that it is a perpetuity and void, in accordance with several well-known authorities, such as *Hoare* v. *Osborne*, 1866, L.R. 1 Eq. 585, and *Re Rigley's Trusts*, 1866, 36 L.J., Ch. 147. If Mrs. PARRISH was in fact domiciled in America (a statement of domicil in a will not being necessarily conclusive), the duty of the English executor would be to collect the moveable assets in England, pay debts, funeral and testamentary expenses according to English law, and transmit the residue to the executor acting in the country of domicil: see *Re Kloebe*, 1884, 28 C.D. 175. If the country of domicil was the United States, the law applicable to deal with the assets would be that of the State of the domicil, Pennsylvania. If, further, the tomb was in England, and the Pennsylvanian law permitted a bequest for its upkeep, the American executor would no doubt lawfully apply money transmitted to him for such a purpose, or by taking a short cut he might authorise the English executor to do so. In such case the latter would, of course, be acting not as executor, but as agent. In *Macdonald* v. *Macdonald*, 1872, L.R. 14, Eq. 60, the court made an order to marshal the Indian assets of a domiciled Scotsman, to give effect to a charitable Scottish legacy that would have been void by Indian law. Whether an English court could marshal against a legacy void by English law might be a nice point; the right of the English court to interfere at all in the above case is by no means clear, and, had it followed the explosion subsequent to *Ewing* v. *Orr-Ewing*, 1883, 9 A.C. 34, the judge might have proceeded more cautiously.

The Rating of Steel Works.

THE CONDITION of a staple industry was revealed by the case of *Cammell, Laird and Co. Ltd.* v. *Sheffield Assessment Committee*, at the last Sheffield Quarter Sessions, being an appeal against the assessment of the Cyclops Works. In 1920 the amount was £37,900, and, although there were reductions in 1921 to £30,609, and in 1928 to £27,000, the appellants contended that a hypothetical tenant would only pay a nominal rent for the works, which were specially equipped for the manufacture of armour plate. The Washington Convention of 1921 rendered it impossible to anticipate that there could be any market for the latter product, and though the output of other commodities was large, the profit was small. A foundry had been erected at great cost, but had been run at a loss since 1921, and the appellants had paid their debenture interest out of accumulated reserves. The case for the respondents was that the trade depression, and lack of orders through diminution of armaments, had been taken into account, and that the hypothetical tenant to be considered must not be the short-sighted type. The business had had money spent on it in recent years to secure its efficiency, and the question whether it should have been discontinued was therefore beside the issue, as works were not kept open unless there was a reasonable expectation of future profits. The learned Recorder, Mr. W. J. WAUGH, K.C., criticised the tribunal which had to try a rating appeal, his view being that such a tribunal should have a legal member to decide points of law, and two expert rating authorities to assist him with regard to the facts given by valuers as to the rateable value. He was satisfied that if the appellants had to move, and the present premises were taken, a substantial rent would be given. On the question of the amount, it was admitted that a section of the premises was not now used, and would not be used, as until 1931 the armour plate department could not be substantially employed. It was necessary to take into account the very costly and heavy machinery, in estimating what rent a hypothetical tenant would give, but there was also the circumstance that that machinery must stand idle, at all events, for the current year, and was retained only in the hope that it might again be of value in the future. There being no return of capital with regard to the machinery, he concluded that a hypothetical tenant would give £25,000 for the premises, and the assessment was accordingly reduced to that figure. It transpired that since the rate was made in April, 1928, about 137 tons of armour plate had been made, whereas the capacity of the works was about 8,000 tons. The conclusion is that Sheffield is a city which will benefit under the legislative proposal to reduce rates by 75 per cent. on productive industries.

The "Daily Mirror" Libel Case.

THE RESULT of the action of *Cassidy* (*otherwise Corrigan*) v. *The Daily Mirror*, is worth attention, for it concerns not only the proprietors of big newspapers, who can take very good care of themselves, but the public generally. The facts were simple. A press photographer at a race-meeting asked a Mr. CORRIGAN, whose former name was CASSIDY, and who was an owner of horses, for leave to take his photograph. Ultimately it was taken with a lady whom, without any dissent on her part, he described as his fiancée. The photographer asked whether the fact of the engagement might also be published, and permission was given. The picture appeared in *The Daily Mirror* with a footnote as to the engagement. The man, however, was in fact married to another woman, and his wife, who was living apart from him, sued the newspaper for libel. She adduced evidence that some of her neighbours, seeing the announcement, and deeming therefore that her husband was free to marry, looked askance at her. Of course neither the staff of *The Daily Mirror* nor the press photographer knew anything about the wife in the background. MCCARDIE, J.,

directed the jury that, if her friends reasonably inferred from the announcement that she was the man's mistress rather than his wife, they should award her damages. They awarded her £500—a substantial sum, but, as the judge pointed out, the offence was certainly not mitigated by pleadings which put the plaintiff to the proof of her marriage. The pith of the matter, however, so far as the public generally is concerned, is that the law laid down by the judge applies not only to newspapers, but to anybody who makes the assertion in writing that X is engaged to Y—and, of course, by virtue of the Slander of Women Act, 1891, to the spoken word. In effect, the person who in speech or writing makes such an assertion appears to warrant in law that there is no Mrs. X, and that, therefore, a person holding herself out to be Mrs. X, and who has lived with X, as such, is not in fact his wife, but his mistress. Obviously if such a warranty is implied, the statement is defamatory to the lady, though the person making it is ignorant of her existence. Girls often become engaged to persons quite unknown to their relatives, and the dangers of this doctrine are obvious. The old City of London case of a man being called a "cuckold," *Vicars* v. *Worth*, 1721, 1 Str. 471, may be regarded as distinguishable, for there the defendant assumed knowledge of the wife's lack of morals. The above case, together with *Hulton* v. *Jones*, 1910, A.C. 20, and *Jones* v. *Jones*, 1916, 2 A.C. 481, may suggest that the law as to libel and slander needs overhauling.

Time and Distance.

PRACTITIONERS FAMILIAR with the airy irresponsibility of witnesses over such matters as the speed of a car, the width of a road, or the time occupied by an incident, will welcome the practical suggestion of Dr. W. B. PURCHASE, deputy-coroner for East London, that it would be a good thing if spaces a yard long were marked out on the walls of the court, so that the jury might picture the distance which cars took to pull up. Many witnesses say yards when they mean feet, minutes when they mean moments; and we all know the man who says he had had a drop when he really means a gallon. A police witness, speaking quite glibly of hundreds of yards and of half-miles, was nonplussed when the solicitor cross-examining him asked him how many yards there were in half a mile. Truth to tell, it is generally safer to trust the more cautious witness, who says the car came much faster than the other traffic, that a conversation lasted just a few minutes, or that the road was fairly wide, than to rely on him who adheres obstinately to his estimate of 35 miles an hour, ten minutes, or 60 feet. Only those who have special qualification or training ought to be expected to give definite figures. The expert motorist may become a judge of speed, and police officers, by reason of their training, should be able to speak accurately of time and distance. A few others, with standards of their own to guide them, may be trusted, such as the old cricketer, who can compare any short distances, in his mind's eye, with the length of the pitch. For the rest, the measured distance displayed in court, or the test of time by measuring a minute's silence, would probably have this effect at least, that if it did not enable the witness to pledge himself definitely to figures, it would deter him from reckless and often palpably ridiculous inaccuracies. The suggestion is capable of development. Why not print, in large type, tables of length, weight and capacity? Many of us have forgotten just how many pounds go to a bushel or how many grains go to an ounce, and could do with a reminder. Still more seem to have forgotten that a single minute consists of sixty seconds and is long enough for much to happen in it. As for capacity, perhaps it were best to display (well out of reach) such articles as a filled wine-glass, a half-pint glass, a pint pot and a gallon jar, so that the witness (or may be the defendant) might refresh, not himself, but his memory, and realise the measure and possible effects of his indiscretions.

Dutch v. *Dutch*.

The Code Applicable to Appeals to Divorce Divisional Courts—Adultery as a Continuing Offence—Limitation of Time and Knowledge—Justices' Decisions and *Res Judicata*.

As reported in 45 T.L.R. at p. 35, Lord Merrivale in paying a well-merited compliment to Mr. Griffith-Jones, the Metropolitan Police magistrate sitting at Greenwich, stated that "he is no simple and untrained person who comes to a problem of this kind with a natural disability to deal with its intricacies." It is somewhat unfortunate that in contrasting the police magistrate with lay magistrates he should have referred to the latter in this way, seeing that lay magistrates in discharging duties that have been imposed on them by the Legislature deal with vastly more matrimonial causes than the Divorce Court.

To explain the case of *Dutch* v. *Dutch*, 72 SOL. J., 796, it is necessary to describe the previous state of the law. The Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925, form a complete code of the law relating to matrimonial causes as administered by courts of summary jurisdiction. The Matrimonial Causes Acts are excluded, with one exception, which is that the word "desertion" in s. 5 of the Summary Jurisdiction (Married Women) Act, 1895, has the same meaning as in the Matrimonial Causes Act, 1857, now s. 185 (1) of the Supreme Court of Judicature (Consolidation) Act, 1925. By s. 11 of the Act of 1895 there is an appeal from any order or the refusal of any order by a court of summary jurisdiction under the Act to the Probate, Divorce and Admiralty Division, and by Ord. LIX, r. 7, the Appeal Court are limited to making such order as ought to have been made by the court of summary jurisdiction. Accordingly on appeal the Divorce Court are administering the code to be found in the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925, and not the law laid down by the Matrimonial Causes Acts which have been repealed and re-enacted in the Supreme Court of Judicature (Consolidation) Act, 1925.

Section 8 of the Act of 1895 provides that all applications under that Act shall be made in accordance with the Summary Jurisdiction Acts, thereby incorporating s. 11 of the Summary Jurisdiction Act, 1848, which enacts that in all cases where no time shall thereafter be specially limited, complaints shall be made within six months from the time when the matter of such complaint arose. Section 7 provides that a court of summary jurisdiction may, on the application of the married woman or of her husband, and upon cause being shown upon *fresh evidence* to the satisfaction of the court *at any time* alter, vary or discharge any order. If any married woman, upon whose application an order shall have been made, shall voluntarily resume cohabitation with her husband, or shall commit an act of adultery, such order *shall upon proof* thereof be discharged.

In *Weightman* v. *Weightman*, 70 J.P. 120, it was decided that owing to the words "at any time" in the first sentence of this section, applications on fresh evidence could be made at any time and that the six months' limitation did not apply. It will be observed that the making of the order is discretionary. In *Matthews* v. *Matthews*, 1912, as reported in 76 J.P. at p. 317, Lord ALVERSTONE, C.J., said: "I cannot think that that enactment, which occurs at the end of s. 7 of the Act of 1895, was meant to be independent of the earlier part of the section," and in *Timmins* v. *Timmins*, 1919, P. at p. 78, Lord COLERIDGE, J., spoke of the last paragraph as an exposition, he would rather not say limitation, of the earlier part of the section. In *Waller* v. *Waller*, 1927, P. 154, on the hearing of which no reference was made to either *Matthews* v. *Matthews* or *Timmins* v. *Timmins*, the Divorce Court held that the six months' limitation imposed by the Summary

Jurisdiction Act, 1848, s. 11, applied to applications under the second sentence of the section. In some cases it may be desirable to make complaints under each sentence.

Section 10 of the Act of 1895 provides that if in the opinion of a court of summary jurisdiction the matters in question would be more conveniently dealt with in the High Court, the court of summary jurisdiction may refuse to make an order, and no appeal shall lie from that decision. Provided that the High Court shall have power by order in any proceedings in the High Court relating to the same matter to direct the court of summary jurisdiction to re-hear and determine the same.

In *Dutch* v. *Dutch* the facts as found by the metropolitan police magistrate were that the spouses intermarried in 1902, that the wife in 1905 obtained an order of maintenance against her husband, that the wife had committed adultery in 1915 with a Mr. Barrett, with whom she went through a ceremony of marriage in June 1921, and that she lived with Barrett as his wife, until his death in May, 1928. On 10th September, 1928, the magistrate made an order discharging the maintenance order as from 1915, and the wife appealed. At the hearing of the appeal the point that a retrospective order of discharge could not be made was not raised. The second sentence of s. 7 provides that "upon proof thereof" the order shall be discharged. *Ruther* v. *Ruther*, 1903, 2 K.B. 270 (as explained by Pickford, J., in *Matthews* v. *Matthews*, 1912, 3 K.B. 91, and Avory and Salter, JJ, in *Outerbridge* v. *Outerbridge*, 1927, 1 K.B. 368), decided that an order of discharge cannot be made retrospective. In *Waller* v. *Waller*, *supra*, there is an *obiter dictum* by Merrivale, P., to the same effect. It will be noticed that in *Jones* v. *Jones*, 40 T.L.R. 794, the order appealed from was not retrospective.

The appeal was argued on the point that as the adultery commenced in 1915 the limitation of time commenced to run from that time and at the end of six months thereafter, any application for discharge was barred by that limitation, and an *obiter dictum* of Lord Chelmsford in *Gipps* v. *Gipps*, 11 H.L. Cas. at p. 18, that it is the first act of adultery which constitutes the crime, was quoted as an authority for this proposition. The answer that Mrs. Dutch had lived with Barrett as his wife down to 3rd May, 1928, or within four months of the application, would alone have disposed of the point on which this case was contested. Adultery, like desertion, persistent cruelty and neglect to maintain may come to an end, but so long as the offence continues, it is a continuing offence to which the six months' limit will not apply, *Price* v. *Price*, 43 T.L.R. 609; *Ellis* v. *Ellis*, 1896, P. 251; *Heard* v. *Heard*, 1896, P. 188.

In the judgments of the Divorce Court, other points were dealt with. The President said that as to the claim for maintenance *in futuro*, other considerations affect it, because the finding of the magistrate in these proceedings is not a finding which is of record. This does not appear to be the test. In *Wakefield Corporation* v. *Cooke*, 1904 A.C. 31, the House of Lords held that in a case before justices where the question was one of the very questions they had to determine, their decision on that question was binding and conclusive, but that it is otherwise, if, as in *R.* v. *Hutchings*, 6 Q.B.D. 300, the question is only a matter incidentally cognisable by them. Section 178 of the Supreme Court of Judicature (Consolidation) Act, 1925, requires the Court to satisfy itself as to the facts before granting a divorce, and thereby abrogates to that extent the doctrine of *res judicata*. The opinion expressed in *Pratt* v. *Pratt*, 43 T.L.R. 523, so far as it went outside this limitation, is right only if it is assumed that the application was made under the first sentence of s. 7 of the Act of 1895, and therefore the adultery was only incidentally cognisable by the justices.

In rejecting the argument of the appellant, the President said that when an act of adultery has been committed, there is *prima facie* the right to relief under the Matrimonial Causes Act, and the answer to it must be one of the answers found in the Acts—either the absolute answer of condonation, or of conduct conducing or of one of the discretionary answers, and he proceeded to apply that simple rule. Now the code the President had to apply was not that contained in the Matrimonial Causes Acts or the answers found in those Acts, but the code contained in the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925, and the answers were those contained in s. 2 (1) of the Summary Jurisdiction (Separation and Maintenance) Act, 1925. Reference is made in the case, both in argument and in the judgment, to the question whether the magistrate ought to have remitted this case to the High Court on the ground of difficulty. There is no power to remit, s. 10 of the Act of 1895 providing that the court may refuse to make an order, the effect of such refusal being that the complainant must commence proceedings *de novo* in the High Court, when the Matrimonial Causes Acts and not the Summary Jurisdiction (Separation and Maintenance) Acts will apply.

Mr. Justice Hill, in his judgment, stated that the magistrate was bound to discharge the order on proof of the adultery of the wife, unless he found conduct conducing, provided that the husband's application was made in time, or made upon fresh legal evidence as understood in this court. *Weightman* v. *Weightman* and *Waller* v. *Waller*—in which judgment Mr. Justice Hill agreed—can only be reconciled by holding that an application under the second sentence of s. 7 of the Act of 1895 cannot be treated as an application under the first sentence. Therefore, as the complaint in *Dutch* v. *Dutch* was framed under the second sentence, "fresh evidence" had nothing to do with it. He then proceeded to state that "You still have to inquire when the husband knew or ought to have known of his wife's adultery." Appellant's counsel had submitted that the limitation of time was six months of the occurrence, or, at any rate, within six months of his knowledge or his means of knowledge of the alleged fact. There is no reference to knowledge in s. 11 of the Summary Jurisdiction Act, 1848, and it is submitted that there is no power to interpolate any such words in that section.

It is therefore submitted that the decision in *Dutch* v. *Dutch* can be supported on the ground that adultery had been committed within six months of the complaint, but, apart from that, the case is of little authority.

On 5th January, 1929, in *Elderfield* v. *Elderfield*, Mr. J. B. SANDBACH, K.C., a Metropolitan police magistrate, sitting at Lambeth, found that the wife had committed adultery in Canada more than six months before the date of the complaint, that the husband had no knowledge of it until 1927, and that he had commenced proceedings within six months of it coming to his knowledge. The decision in *Waller* v. *Waller* created the difficulty, but acting upon *Dutch* v. *Dutch*, he ordered the wife's maintenance order to be discharged. Up to 1927 the commonly accepted opinion was that the words "at any time" in s. 7 of the Act of 1895 governed the whole of that section, and it is desirable that the Court of Appeal should be asked to decide whether *Waller* v. *Waller* was rightly decided.

Mr. Robert Walter Prideaux, solicitor, of Woodford, Dartmouth, Borough Coroner and Clerk to the Justices, who died on 27th November, aged eighty-one, left estate of the gross value of £25,278, with net personalty £22,058. He left: £60 a year to Julia Maud Eveleigh, if in the employ of Mrs. Prideaux at the time of her death.

The attention of the Legal Profession is called to the fact that THE PHŒNIX ASSURANCE COMPANY LTD., Phœnix House, King William Street, London, E.C.4 (transacting ALL CLASSES OF INSURANCE BUSINESS), invites proposals for Fidelity Guarantee and Court Bonds, Loans on Reversions and Life Interests. Branch Offices at Byron House, 7, St. James's Street, S.W.1; 187, Fleet Street, E.C.4; 20-22, Lincoln's Inn Fields, W.C.2; and throughout the country.

Landlord and Tenant Act, 1927.

By S. P. J. MERLIN, Barrister-at-Law.

XIII.

The New Provisions as to Damages for Breach of Covenants to Repair, and as to Assignment and Underletting.

The tendency shown in Pt. I of this Act to ameliorate certain hardships, which had grown into prominence under the old law of landlord and tenant, in the legal position of a lessee in relation to improvements and goodwill, is continued in Pt. II of the Act, which contains new and important provisions of general application as to the measure of damages for breaches of covenant to repair and as to assigning and underletting.

One of the notorious anachronisms upon which legislative attention was focussed during the passage of the Bill was that class of case, illustrated in many law reports, where landlords, *after* having demolished the premises at the end of a lease in pursuance of a scheme of re-building, or after having sold them to railway companies as sites for stations or otherwise, have nevertheless recovered heavy damages from the outgoing tenant, or in some cases from the astonished original lessee, for breach of covenant to leave the premises in good repair. This unfair state of things has now been remedied, and in future no such damages will be recoverable where the premises are going to be pulled down, or so altered as to make the repairs covered by the covenant of no actual value to the landlord. The express provisions on these matters are found in s. 18 of the Act, which lays down that damages for a breach of a covenant or agreement to keep or put premises in repair during the currency of a lease, or to leave or put premises in repair at the termination of a lease, whether such covenant or agreement is expressed or implied, and whether general or specific, shall in no case exceed the amount (if any) by which the value of the reversion (whether immediate or not) in the premises is diminished owing to the breach of such covenant or agreement as aforesaid; and in particular no damage shall be recovered for a breach of any such covenant or agreement to leave or put premises in repair at the termination of a lease, if it is shown that the premises, in whatever state of repair they might be, would at or shortly after the termination of the tenancy have been or be pulled down, or such structural alterations made therein as would render valueless the repairs covered by the covenant or agreement.

It is to be noted that the earlier provisions of this section deals with two forms of covenants commonly found in leases: (1) To keep or put the premises in repair during the currency of the lease; and (2) To leave or put the premises in repair at the termination of the lease. In declaring that the measure of damages for a breach of the first of these covenants shall in no case exceed the amount by which the (marketable) value of the reversion is diminished, the section in its earlier provision makes but little practical difference in the old law. And as the later provisions of the section are confined to the covenant "*to leave*" in repair, it is conceived that they do not affect the first-mentioned covenant "*to keep*" in repair. For example, where during the lease the tenant fails to observe his repairing covenant (particularly in respect of specific decorative repairs in first-class premises to be done at specified intervals) and the landlord during the currency of a lease brings an action for damages he would still, it is submitted, be entitled to recover damages, although it may be admittedly his intention, at the end of the term, to demolish the premises.

By sub-s. (2) of s. 18 it is enacted that a right of re-entry or forfeiture for a breach of covenant to repair shall not be enforceable unless the lessee receives actual notice of the breach in question. This sub-section provides a remedy for a serious defect in the old law relating to forfeiture under which a lessee might forfeit his lease, or suffer much expense, by reason of a notice as to repairs not being served on him personally, but constructively, merely by affixing it on the premises or in some way which did not bring the notice to his knowledge. Hereafter knowledge of such notice must be proved by the landlord against either the lessee, an under-lessee of substantially the whole term, or the person who last paid the rent on his own behalf or as agent for the lessee or under-lessee. Moreover, the lessee, etc., has a reasonable time for the execution of the repairs as from the time the notice actually came to his notice.

The new provisions affecting covenants against assigning or underletting are to be found in s. 19 of the Act. This section (which is retrospective in its effect and operative on all existing leases except those relating to mining leases and agricultural holdings) has the virtue of importing into all leases which come within its scope, and which contain a covenant against assigning, underletting, charging, or parting with the demised premises or any part thereof *without the licence or consent* of the landlord, *a proviso that notwithstanding any express provision to the contrary*, such licence or consent is not to be unreasonably withheld, the landlord, however, not being precluded from requiring payment of a reasonable sum in respect of any legal or other expenses incurred in connexion with the grant of such licence or consent.

It may be mentioned, however, that, with regard to leases which contain an *absolute covenant* against assigning or underletting (as distinguished from those followed by the words "without licence or consent &c.") these appear to be outside the effect of this section altogether.

Where a tenant is in doubt about his position, and the landlord expressly refuses his consent to an assignment, he would be well advised to obtain a declaration from the court, by way of an originating summons, or by action, as was done in the leading case of *West* v. *Gwynne*, [1911] 2 Ch. 1, where it was held that s. 3 of the Conveyancing Act, 1892, applies to all leases, whether executed before or after the commencement of the Act, and, in the absence of express provision to the contrary, engrafts upon every covenant in any such lease against assignment or underletting without consent, a proviso that no money shall be payable in respect of such consent. If a lessor refuses to give a consent except upon payment, the lessee is relieved from obtaining his consent, and can make a valid assignment or underlease without it; and he is also entitled to bring an action for a declaration to that effect, in which costs will be given him, though no relief is asked for beyond the declaration.

Since the Act has come into operation there have been, so far, very few judicial decisions upon its provisions. This is due mainly to the length of time required under the rules for a contested case to come to trial. The Act, however, is undoubtedly a parent Act of magnitude, and contains in it the foundations and germs of what must necessarily involve a great volume of litigation and eventually beget further ampliative legislation of the same character.

Housing: Some Legal Difficulties.

By RANDOLPH A. GLEN, M.A., LL.B.

IV.

The Repair of Individual Houses.

In my previous article I dealt with "closing" orders. Sections 14 and 15 of the Act of 1925 (replacing s. 18 of the Act of 1909), provide for "demolition" orders after closing orders have remained operative for three months. A closing order becomes "operative" when (*a*) the time for appealing against it (fourteen days after service of the order, see s. 11 (2) of the Act of 1925) has expired without an appeal; or (*b*) an appeal has failed; or (*c*) a counter notice has been served by the

owner as already mentioned (*ante*, pp. 737, 738). A demolition order may not be made unless the local authority are satisfied (*a*) that the house has not been rendered fit and that diligent steps are not being taken to render it fit; or (*b*) that its continuance is a "nuisance or dangerous or injurious to the health of the public or of the inhabitants of the neighbouring houses" (s. 14 (2)).

Under the repealed Artisans Dwellings Act, 1868, 31 & 32 Vict., c. 130, s. 5, it was held unnecessary (*a*) to make a separate demolition order in respect of each house in a block; or (*b*) to specify in detail in such an order the structural defects alleged: *Flight* v. *Southwark Vestry*, 1871, 25 L.T. 24; *s.c. nom. Reg.* v. *Flight*, 36 J.P. 262).

After a closing order had remained operative for three months, the owner made structural alterations to convert the house into a warehouse, but the local authority made a demolition order. The owner appealed to the Local Government Board. On a case stated by the Board, it was held (1) that the local authority were bound to order demolition but (2) that the Board had power to take into consideration the fact that the owner did not intend to use the house again for human habitation, and to quash or vary the order on that ground: *Lancaster* v. *Burnley Corporation*, L.R. 1915, 1 K.B. 259.

Section 14 (3) of the Act of 1925 enables an owner to apply to the local authority for postponement of a demolition order for six months if he undertakes to "execute forthwith the works necessary to render the house fit for human habitation." If such works are executed to the satisfaction of the local authority, they are required to determine both closing and demolition orders. In *Broadbent* v. *Rotherham Corporation* (*No.* 1), L.R. 1917, 2 Ch. 31, it was held that, in considering such an application, the local authority must exercise their discretion "judicially." To decide on the *ex parte* evidence of the medical officer of health that the houses cannot be repaired, without considering the owner's offer to submit plans and specifications, which he is advised will render them habitable, is not such an exercise of their discretion. An injunction was accordingly granted restraining a local authority that had so acted from carrying out the order until they had heard and determined the application for postponement according to law. In consequence of this injunction, the local authority's housing committee inspected the premises, considered the plans and specifications with the owner's architect, heard the owner's solicitor, and again refused to postpone the order. They also refused to give the owner any reasons why her proposals were insufficient, and sequestration proceedings were taken for breach of the order to hear and determine the application according to law. It was contended that the owner was entitled to know in what respect his plans were insufficient, so that he might alter them, and that he ought to have "a fair opportunity to correct or contradict any relevant statement" prejudicial to her case. It was held, however, that there was no obligation on the authority to disclose their reasons, or say in what respect the tendered plans were insufficient: *Broadbent* v. *Rotherham Corporation* (*No.* 2), 82 J.P. 141; 16 L.G.R. 357; 62 Sol. J. 451.

Obstruction of the power of entry on private premises for the purposes of the Housing Acts, which was conferred by s. 77 of the Act of 1890 (repealed and replaced by s. 36 of the Act of 1909, now s. 127 of the Act of 1925) was held to be punishable summarily: *Arlidge* v. *Scrase*, L.R. 1915, 3 K.B. 325.

Section 19 of the Act of 1925 enables local authorities, subject to payment of compensation (see s. 20), to demolish a building which, "although not in itself unfit for human habitation," is "so situate that by reason of its proximity to or contact with any other buildings it (*a*) stops or impedes ventilation or otherwise makes or conduces to make such other buildings to be in a condition unfit for human habitation or dangerous or injurious to health; or (*b*) prevents proper measures from being carried into effect for remedying any nuisance injurious to health or other evils complained of in respect of such other buildings." It was held, under the corresponding provisions now repealed (Acts of 1890, s. 38; 1909 s. 46, Sched. II; 1919 (c. 35) s. 39, Sched. II; and 1923, s. 16, Sched. II) that the "obstructive building" need not be a "dwelling-house," so that the workshop of a cycle maker and mechanic came within them: *Jackson* v. *Knutsford U.D.C.*, L.R. 1914, 2 Ch. 686; 58 Sol. J. 756.

Next week I propose to deal with appeals to the Minister of Health.

A Conveyancer's Diary.

Spurious Easements.

Before continuing to discuss further points of law and practice relating to restrictive covenants, we wish to answer a criticism of the first article on this subject, contained in the letter of A.F., published in the last issue of this paper.

A.F. demurs to the statement that positive covenants only bind the covenantor in law, and that subsequent owners, whether with notice or not, will not be bound by them. He further states that a positive covenant to repair a fence binds in law successive owners of the land affected by the covenant, and refers to authorities cited in "Everyday Points in Practice," p. 451. The cases so cited are: *Lawrence* v. *Jenkins*, 1873, L.R. 8 Q.B. 274; *Boyle* v. *Tamlyn*, 1827, 6 B. & C. 329; and *Coaker* v. *Willcocks*, 1911, 2 K.B. 124.

With the greatest respect to our learned correspondent, we are unable to find, in any of these three cases, reference to a positive covenant.

The decisions depended on the law of easements, which is, of course, very different from that relating to restrictive covenants.

In the first case the owner of the dominant tenement had a prescriptive right, sometimes called a "spurious easement," to compel the owner of the servient tenement to maintain a fence for the benefit of the dominant tenement. The evidence given in support of this prescriptive right was that for more than forty years the servient owners had repaired the fence when requested to do so by the dominant owner.

The second case was similar to the first. Here, the judge held that the only right which could compel the owner of one piece of land to maintain a fence for the benefit of another piece of land was the grant of an easement. In that particular case the judge rejected, as improbable, the contention that an easement had been granted; but a new trial was ordered on appeal, as there was evidence that for many years the fence had in fact been repaired by the defendant.

In the third case the defendant who owned inclosed forest land admitted that he was bound to repair the boundary fence, so the nature of the right in question was never discussed.

Accordingly, in face of the authority of *Austerberry* v. *Oldham Corporation*, 1885, 22 Ch. D. 750, where it was held that covenants to repair a road did not run with the land, we find ourselves unable to yield to our learned correspondent's demurrer.

Building Schemes.

It will have been seen, from the last article on this subject, that the existence of a building scheme is, or may be, an important element in determining whether restrictions are binding as between purchasers of different parts of an estate. Hence, it is important to discover, so far as the authorities show, the exact circumstances that will be held to constitute a building scheme.

The first case which it is necessary to consider on this point is *Osborne* v. *Bradley*, 1903, 2 Ch. 446, from which the following principles appear.

It must be borne in mind that the essence of a building scheme is contract. The court, in enforcing covenants

entered into, has, in law, no jurisdiction to consider the balance of convenience or matters of that sort.

The first thing then is to discover some form of contractual obligation between the parties to the scheme. A purchaser who is shown a building plan is not entitled to assume from it the existence of a building scheme: *Tucker* v. *Vowles*, 1893, 1 Ch. 195. There must also be a contract binding, on each of the purchasers, one with another, and on the vendor if he retains any part of the estate, and it must appear that each of the purchasers, when they bought, intended the restrictions to apply to the whole estate or to those parts of the estate, at least, to which they are expressed to apply; for, as we have mentioned before, restrictions may be made to affect some parts of the estate and not others, or to affect different parts of the estate in different ways. To secure that a contractual obligation exists, the land to be affected by the covenants must be stated in the particulars, and the conditions of sale must show who are to be bound by the covenants, and who are to have the benefit of them.

The words of Farwell, J. (*Osborne* v. *Bradley*, *supra*), in which he stated the theory of building schemes, are worth quoting in full. They are as follows:—"The whole theory of these inter-dependent covenants appears to me to point to an arrangement made once for all, either on a sale by auction, by conditions of sale stating the covenants and that other persons will enter into similar covenants, and a plan exhibited at the sale, or by a scheme entered into already by antecedent sales, the particulars of which are stated to the purchaser and which are displayed upon a plan drawn upon the purchaser's deed: see *Renals* v. *Cowlishaw*, *supra*, where James, L.J., says: 'To enable an assign to take the benefit of restrictive covenants there must be something in the deed to define the property for the benefit of which they were entered into.' To the same effect is *Spicer* v. *Martin*, 1888, 14 App. Cas. 12."

These words show clearly the minimum that is required to constitute a building scheme. With them we will leave this case and proceed to the consideration of the later cases: but there is more in this case which is connected with the point, and it will repay careful study for those who wish to consider the matter more deeply.

Landlord and Tenant Notebook.

Actual Possession for the purpose of de-control.

The question of what constitutes actual possession for the purpose of de-control came up for consideration again before a Divisional Court in *Fainlight* v. *Thurgood* (unreported), and the point raised in that case was whether the fact that an arrangement has been made by the landlord with a new tenant for the letting of the premises while the sitting tenant was still in occupation precluded the landlord from obtaining actual possession of the premises for the purposes of s. 2 (1) and (3) of the Rent and Mortgage Interest Restrictions Act, 1923.

Those sub-sections, in as far as they are material, are as follows:—

"Where a landlord of a dwelling-house to which the principal Act applies is in possession of the whole of the dwelling-house at the passing of this Act or comes into possession of the whole of the dwelling-house at any time after the passing of this Act, then from and after the passing of this Act, or from and after the date when the landlord subsequently comes into possession, as the case may be, the principal Act shall cease to apply to the dwelling-house . . .

"(3) For the purpose of this section, the expression 'possession' shall be construed as meaning 'actual possession' and a landlord shall not be deemed to have come into possession by reason only of a change of tenancy made with his consent."

Now the facts in *Thurgood* v. *Fainlight* were briefly as follows:—

In August, 1914, the premises in question had been let to one Mrs. L. Subsequently, in 1925, the appellant Fainlight became the owner of the property in question. Towards the end of September, 1928, the tenant, Mrs. L, informed the landlord that she intended to vacate the premises. While Mrs. L was still in occupation the landlord entered into an arrangement with the respondent Thurgood to let the premises to him. No date for the commencement of the tenancy was fixed, the landlord having informed the respondent that the premises were in a bad state of repair and had to be done up. A sum of 25s., however, was paid by the tenant to the landlord and a receipt therefor was given to him. The receipt being in the following terms:—

"Received one week's rent 25s. subject to reference satisfactory. "F. FAINLIGHT."

This receipt bore no date, but according to the evidence the above payment and the receipt were respectively made and given on the 20th September, 1928, while the tenant, Mrs. L, was still in occupation.

On the 1st October, 1928, Mrs. L. vacated the premises and handed over the keys to the landlord. The landlord thereupon instructed a builder to execute certain repairs to the premises, the execution of which took about a week or thereabouts. On or about the 7th October, the landlord sent a postcard to the tenant's wife to come to select the wallpapers, and this selection was made on the following day. Subsequently on 11th October the tenant was informed that the premises were ready for occupation, and on the 12th, he moved in, his tenancy commencing from that date.

The learned County Court judge held, in the court below that the landlord had not obtained actual possession of the premises because of the previous arrangement with the respondent, while the previous tenant was still in occupation, the learned County Court judge apparently taking the view, that in order to have actual possession as required by sub-s. (3), s. 2 of the Act of 1923, the landlord must come into possession, unfettered by any new letting contract, and with a free hand, as it were, to deal with the property.

The Divisional Court does not appear to have dealt expressly with this latter point, because for the purpose of their decision, it was not necessary for them to do so. If there was any new contract in the above case (which in itself is a matter of some doubt, since the date of the commencement of the tenancy was not determinable at the date of the arrangement in question), such a contract was required by the Statute of Frauds to be in writing (*Edge* v. *Strafford*, 1 C. & J. 391), and there was in the circumstances no adequate note or memorandum, the receipt in question being clearly insufficient, because it did not mention the lessor or lessee, nor the date of the commencement of the tenancy, nor the property. Nor was there any part performance sufficient to take the case out of the statute, since, even if the acts of the landlord in executing the repairs and papering the walls with the paper selected by the tenants were to be regarded as a sufficient part performance, these were acts which the landlord and *not* the tenants might have taken advantage of: *Caton* v. *Caton*, 1 Ch. App. 137, 148.

WORK AT THE ASSIZES.

While the Hilary law sittings are in progress no fewer than thirteen of the seventeen King's Bench judges will be called away for varying periods on assize duty.

The four remaining in town throughout the sittings will be Mr. Justice Avory, Mr. Justice Shearman, Mr. Justice McCardie, and Mr. Justice Branson.

Saturday is Commission day on the Western, Northern, and Midland circuits, Monday on the South-Eastern circuit, Tuesday on the North Wales circuit, and Thursday on the South Wales and Oxford circuits.

Our County Court Letter.

TERMINATION OF SERVICE CONTRACTS.

THE length of notice required to terminate a commercial traveller's agreement was considered in the recent case of *Rogers* v. *Rose Hewitt and Co. Limited* at Manchester County Court. In 1906 the plaintiff had entered the employment of the firm, then Rose Hewitt and Co., as a stockkeeper and warehouseman, and in 1910 there was a mutual agreement in writing for one week's notice on either side. In 1922 the firm became bankrupt, the defendant company then being formed, and in 1926 the plaintiff was given a position as commercial traveller, which he held until 1928. By reason of departmental changes the plaintiff was ultimately discharged with one week's notice, but he claimed to be entitled to three months' notice or to salary and commission in lieu thereof. The plaintiff's evidence was that on the formation of the company it was explained to him that the former partners and employees were discharged and had all become servants of the company, but it was contended for the defence that the plaintiff had never been discharged, as his employment had been continuous and the company had taken over the firm's contracts, including that under which the plaintiff was only entitled to a week's notice. It was also pointed out that at the time the plaintiff signed the agreement as to a week's notice, the commercial travellers had signed agreements providing for a month's notice. His Honour Judge Leigh held that (1) when the firm was succeeded by the limited company a fresh agreement was constituted; (2) even if there had been no change in the personality of the employer, it would be ridiculous to suggest that a person who in 1910 (while in a subordinate position) signed an agreement subjecting himself to one week's notice, should be bound by that declaration years later, especially when he had attained a far superior position and might possibly have risen to the rank of managing director. In the circumstances three months' notice would have been reasonable, and judgment was accordingly given for the plaintiff for £46 6s.

The contest in such cases is usually on the point as to whether the plaintiff is entitled to one month's or to three months' notice, but juries will usually find that a commercial traveller (as opposed to a local agent who should more properly be classed as a canvasser) is entitled to three months' notice, as in *Grundon* v. *Master & Co.*, 1 T.L.R. 205.

An unusual claim by an employer was dealt with in the recent case of *Trotter* v. *Luxton* at Honiton County Court. The plaintiff had engaged the defendant as an indoor manservant at £45 a year, but at the end of a fortnight the defendant left without explanation, his work and conduct having been otherwise satisfactory. The plaintiff was consequently put to inconvenience, and he sued the defendant for £3 15s., being a month's wages in lieu of notice. The defendant had accepted the plaintiff's written offer to start at £45 a year, to be increased shortly if the parties were satisfactory to each other, and the plaintiff had paid the defendant's fare from Plymouth to Sidmouth and had taken out a licence for a manservant. The defendant's case was that he was a weekly servant engaged on trial, and if satisfactory he was to be engaged permanently at increased wages. His Honour Judge Lindley pointed out that there was nothing in the plaintiff's letter to say that the defendant was on a month's trial, whereby he was subject to a month's notice. There was a common idea that when a servant left a master without notice, the master was entitled to a month's wages in lieu of notice, but this was not so. A servant was entitled to a month's wages in lieu of notice, if wrongly dismissed, but the converse did not apply in the absence of a special agreement. By reason of the defendant's breach of contract, the plaintiff had suffered damage, but not to the extent of £3 15s., and judgment was accordingly given for £1 10s.

It will be noted that in the above case the plaintiff was unable to recover the full amount either under his contract, or by custom, though judicial notice could have been taken of the latter, if it had existed. In *George* v. *Davies*, 1911, 2 K.B. 445, a domestic servant claimed a month's wages, which the mistress refused to pay, as the plaintiff had left at the end of the first month after giving notice during the first fortnight. She claimed to be entitled to do so by custom, though no evidence thereof was given, but the Divisional Court held that judicial notice had been rightly taken of the custom, and upheld the judgment in favour of the plaintiff.

Correspondence.

Discharged Prisoners.

Sir,—May I plead for the privilege of a little space in your valuable paper to ventilate the following facts:—

(*a*) There are fifty-four local discharged prisoners' aid societies certified by H.M. Secretary of State operating at all prisons, and in many closed prison areas, covering all county areas in England and Wales.

(*b*) Over 30,000 discharged prisoners are aided annually irrespective of creed, age or sex.

(*c*) One of the special functions of the Central Society, which handled over 600 discharged prisoners last year, is to deal with difficult cases referred by any of the fifty-four local discharged prisoners' aid societies already referred to.

With regard to the last the task is no light one, particularly under present industrial conditions, as they embody ex-public school and professional men of all classes; ex-officers of the services, commercial men and others.

At this moment I appeal very earnestly to anyone who has opportunity to offer or negotiate a fresh start for four solicitors' clerks ranging in age from twenty-five to fifty-seven, all of whom are first offenders.

I shall be happy to furnish particulars, in confidence, of any or all of them, and an advertisement for one will be found in the situations columns of this week's issue of THE SOLICITORS' JOURNAL.

The Central Discharged Prisoners' Aid Society,
Victory House,
Leicester Square, W.C.2.
21st January.

W. W. JEMMETT,
Secretary.

Books Received.

Report of the Street Offences Committee. Cmd. 3231. 1928 H.M. Stationery Office. 1s. net.

The Lawyer and Banker and Central Law Journal. "*A Journal for Corporation Lawyers and Title Men.*" New Series. Vol. XXI. November-December, 1928: No. 6. The Lawyers & Bankers' Co., New Orleans, La. 75 cents.

The Law Student. A Magazine for Students and Lawyers. Vol. VI No. 2. November, 1928. The American Law. Book Company, Brooklyn, N.Y.

The Gordon Memorial College at Khartoum. Report and Accounts to 31st December, 1927. J. G. MATTHEW, O.B.E., 4, Fenchurch-avenue, E.C.3.

The Representation of the People Acts, 1918 *to* 1928, *and the Law Relating to Jurors.* With Introductions to the Acts of 1918 and 1928; Explanatory Notes; Orders in Council prescribing the Forms to be used, etc.; Official Memoranda and Circulars, etc.; the Report of The Speaker's Conference; Notes as to Proportional Representation and the Alternative Vote; Tables of Statutes and Cases; and a comprehensive Alphabetical Digest and Index. (Second Edition of Author's Representation of the People Act, 1918). G. P. WARNER TERRY, Barrister-at-Law. 1928. Royal 8vo. pp. xxxvi and 452. C. Knight & Co., Ltd. 25s. net. H.

POINTS IN PRACTICE.

Questions from Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to The Assistant Editor, 29, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Gavelkind — Pre-1925 Intestacy — Post 1926 Administration Effect of L.P.A., 1925.

Q. 1542. T.H. died on the 25th July 1914, seised of freehold property in Kent worth £300 and leaving a widow and three sons all of age. The widow has only just taken out letters of administration and is desirous of transferring her interest in the property to the two surviving sons. One son was killed in action in October, 1917, a bachelor and intestate, and letters of administration were granted to his mother in April, 1918. As the property would be subject to the law of gavelkind we imagine that all that is necessary is for the widow to release her life interest in a moiety and assent to the vesting of the property in the two sons or convey the property to them, but we should be glad of a definite opinion on this point. We assume that *ad valorem* stamp duty on the value of the life interest would be payable on the release.

A. It being assumed that the lands were of gavelkind tenure the legal estate would seem to have vested in the three sons as tenants in common in equal shares, subject to the widow's right to half the income for life. On the eldest son's death his share by the custom would pass to his brothers, but the legal estate in this share would vest in his mother on taking out administration. It can probably be assumed there was an implied assent by the mother to the vesting of the undivided share in the other two sons before 1926. If so, then on the 1st January, 1926, it would seem that the property was vested in the two surviving sons in undivided shares, subject to an incumbrance on the entirety (viz., the mother's charge), but (it is assumed) free from incumbrances on the undivided shares, and that para. 1 (2) of Pt. IV of the 1st Sched. would operate to vest the property in the two sons on the statutory trusts. Whether the subsequent grant of administration of the father's estate would transfer the legal estate to the mother appears doubtful. Probably, apart from other considerations, the Statute of Limitation would have operated to prevent this. If the mother is prepared to declare that before 1926 she as administratrix of the eldest son had assented to the vesting in his brothers, a surrender by her of her life interest would appear to be all that is necessary, but as a matter of precaution she might if and so far as the estate was vested in her as administratrix assent to the vesting of it in the sons. If she cannot declare that she assented to the vesting of the deceased son's share as above, the legal estate would on 1st January, 1926, have vested in the public trustee, and a deed of appointment of the two sons in his place should first be executed. *Ad valorem* stamp would be payable on the gift.

Land subject to Fee Farm Rent unapportioned — Old Mortgage Term existing therein — Whether Rent may be Redeemed and Term Enlarged.

Q. 1543. A, some few years ago, purchased a house for the residue of a term of 2,000 years. This term was one of the old mortgage terms, the property being originally freehold, subject to a fee farm rent of £1 0s. 8d., and the property was assigned to A subject to this fee farm rent. The property is very old and the rent apparently is part of a rent of £7 11s. 4d. created by a grant in fee farm, dated 1686. Although the rent mentioned in the assignment to A is £1 0s. 8d., A pays only £3 4s. 8d., and this amount has been paid by A's predecessors in title for many years, certainly over 30 years, as appears from receipts in his possession. (A purchased from a relative, the property having been in possession of the family for many years.) A now wishes to purchase the rent under s. 191 of the L.P.A., 1925, but the owner refuses to sell. I shall be much obliged for advice on the following points: (1) Having regard to the fact that A is not the freeholder but only the owner of a term of years, can he take advantage of the section? (2) Is A's term capable of enlargement under s. 153 of the same Act, having regard to the fact of a rent being payable in respect of the property, although not reserved by the deed creating the term? In all other respects the term is one capable of enlargement. (3) If the term of years is capable of enlargement would it be advisable to enlarge it before taking proceedings to enforce sale of the rent?

A. (1) There appears to be no direct authority on the matter, but the two sections appear to authorise precisely what is desired to be done. The rent is clearly one within s. 191 (1); the application to the minister may be by "any person interested" in the land, which clearly includes A; and power of apportionment is given by sub-s. (7). (2) Once the rentcharge is redeemed, s. 153 will apply, and the term can be enlarged. (3) No.

Lease — Licence to Assign or Sub-let — "Unreasonable" withholding.

Q. 1544. Premises consisting of a shop, kitchen and domestic offices on the ground floor and living rooms on the first and second floors are let for a term of years, and there is a covenant by the tenant "Not to (except by will) assign, underlet or part with the possession of the demised premises or any part thereof without the licence in writing of the lessors first had and obtained (such consent not to be unreasonably withheld in the case of a respectable and responsible tenant)." The second floor was sub-let by the tenant before or during the war as a dwelling without the consent of the landlords, and the sub-letting only came to their notice after the war, but they took no action. The tenant now wishes to sub-let the first floor as a dwelling, and the landlords object to their premises being sub-let to several tenants. Is the tenant entitled to a licence to sub-let the first floor, assuming the proposed sub-tenant to be a respectable and responsible person?

A. When a covenant is framed in this form the tenant is never *entitled* to a licence, nor can he recover damages for a refusal to grant the licence when unreasonable, or obtain specific performance. His remedy is to sub-let without the licence (*Ideal Film Co.* v. *Nielsen*, 1921, 1 Ch. 575, 582), or, in a suitable case, also a declaration under R.S.C., Ord. XXV, r. 5. In this case there do not seem to be any reasonable grounds for refusing the licence (*In re Gibbs & Co.'s Lease*, 1925, 1 Ch. 198 and 575). The previous sub-letting without consent does not seem to affect the position. Section 19 of L. & T. A., 1927, has no effect on the existing provision.

Landlord and Tenant Act, 1927.

Q. 1545. The tenant of certain premises on the 15th October last served upon the landlord, for whom we are acting, a notice requiring a new lease under s. 5 of the above Act. The tenant now suggests that the parties should see whether they can agree upon the terms for the new lease without the necessity of applying to the court. Is it your opinion that if the landlord were to agree to the tenant's request and the lease were to be granted in pursuance of any agreement they might come to, the tenant would be entitled under the Act, at the expiration of such new lease, to require a further new

lease to be granted? If you will refer to sub-s. (8) of s. 5, the effect of which we believe to be that once the tenant has obtained a new lease under s. 5, the operation of that section is spent, and he cannot, when the lease expires, again rely upon the section to obtain a further renewal, it will be seen that it refers to "a new lease granted in pursuance of this section," and the only lease which can be granted in pursuance of that section is one ordered by the tribunal. There is no provision under the section for a new lease being granted by agreement between the parties, and it seems to us that if in the case given above the landlord were to acquiesce in the tenant's request, sub-s. (8) would not apply, and the tenant would be at liberty to require a new lease to be granted on the expiration of the renewed lease. Your views will be appreciated.

A. The tenant here would be entitled, in the absence of any agreement to the contrary, to claim a further new lease at the expiration of the new lease now granted. But this claim would probably be affected by express terms which the landlord would insist on inserting in the new lease now to be granted. If such terms are inserted it would then be a question of fact whether the first new lease was "adequate consideration" within the meaning of s. 9 of the Act, which contains the instructions on contracting out of the Act. This question is dealt with in Mr. Merlin's article on the L. & T.A., in our issue of the 8th December, which also contains forms of clauses which are being used in leases which are now being arranged as matters of friendly compromise under ss. 4 and 5 of the Act.

Landlord and Tenant Act., 1927—Measure of Compensation.

Q. 1546. A, the owner of a fish business making a profit of £400 per annum is desirous of obtaining compensation or a new lease in lieu thereof under the L.T.A. on the expiration of his lease on 25th December, 1929. Can reference be made to any case on the subject where compensation has been granted with a view to assisting in calculating the amount which such a tenant might reasonably claim, and also to help in deciding whether such compensation would be adequate? Is the compensation based upon a number of years' purchase of goodwill reckoned in accordance with the practice amongst valuers?

A. There are no helpful cases reported yet. The only guidance to be obtained is in the terms of s. 4 itself. The provisos to this section should be closely perused and considered.

Settled Land and Remainder Limited to Tenant for Life's Children—Proposed Gift by Tenant for Life and Children now Living.

Q. 1547. Testator, W.C.B., by his will, dated 1890, and proved 1893, devised his real estate to his wife, S.B., for life; after her death, as to one cottage, to be selected by her, to his daughter, Mrs. B.M., for life, and subject thereto, all his real estate to his son, H.B., for life, and after the death of his son, H.B., to his son's legitimate children absolutely. The widow of the testator has recently died. The son, H.B., as the surviving executor of the testator's will, appointed (under s. 30 of S.L.A.) a co-trustee, and a limited grant has been made to the S.L.A. trustees so constituted. The son, H.B., now wishes to convey, by way of gift, to his two nieces (daughters of Mrs. B.M.) two houses forming part of the settled real estate, subject as to one of them to the life interest of Mrs. B.M. (she having selected one of these houses under the option in the will, in respect of which a vesting assent will be executed), and subject as to the other of the two houses, to his own life interest. The special personal representatives of Mrs. S.B. will execute a vesting assent to H.B. of the residuary real estate. Advice is requested how the conveyance to the two nieces can be carried through. H.B. has two children, both *sui juris*, and both willing to concur.

A. If the interlineation in the question is read aright, it is desired to make a conveyance *by way of gift*. There is no way in which the legal estate can be vested in the proposed donees by gift, nor any way in which they can even acquire a marketable or wholly indefeasible equitable estate. By an ordinary deed of gift H.B. and his two sons can give their equitable interests, namely, H.B.'s life interest in remainder, in one house and the two sons' interests in a moiety of both houses, each in remainder, but the title to the latter will be liable during H.B.'s lifetime to be *pro tanto* defeated by the birth of other children. It is assumed that by "his sons' legitimate children" is meant H.B.'s children and not "sons' children" (if there is another or other sons), and that there was no other child of H.B. who survived the testator and has since died.

Divorce—Obtaining Evidence—Would-be Petitioner Assisting Wife in Affiliation Proceedings against Prospective Co-respondent.

Q. 1548. A (husband) wishes to take proceedings for divorce against B (wife), from whom he has lived separate for a number of years, paying her an allowance under an oral agreement. B had a child in May, 1928, and made certain verbal and written confessions, all of which are inadmissible by virtue of *Russell* v. *Russell*. B's association with the proposed co-respondent, himself a married man, was apparently of a very clandestine nature, and it is thought that there is no prospect of obtaining evidence other than by the way mentioned below. Non-access by A cannot be proved owing to proximity of residence.

B is now understood to be anxious to take proceedings to affiliate the child to the proposed co-respondent, and to have a witness to corroborate her, but is lacking the money to do so. Would it be improper for A or A's solicitor or inquiry agent to pay the fee of a solicitor, who, it is understood, will act on B's instructions to commence affiliation proceedings against the putative father, so that if an order was made against the putative father, then the evidence given at the police court would be obtainable upon which to found a petition for divorce?

A. The proposed course of action cannot be classed as any of the conduct which under s. 178 of the Supreme Court of Judicature (Consolidation) Act, 1925, vitiates a suit of divorce. It does not make A accessory to the adultery. It is not connivance at adultery or condonation of adultery. It cannot, in our opinion, be said to make the suit collusive, but nothing whatever should be done beyond paying the solicitor's fee. Great care should be taken to have no consultation with the wife or her agents in the matter, and the course taken should be disclosed to the court from which A seeks relief. With everything open and above board, we can see no impropriety in A acting as suggested.

Sale by Executors to Wife of One of them.

Q. 1549. Mr. X purchased certain property in 1923, and died possessed thereof in 1927. His executors A, B and C sold the property by public auction in 1928, and it was purchased by the wife of one of the executors, Mrs. B. The only beneficiary *sui juris*, D, was a consenting party to the sale, but D's infant children are also beneficiaries and also another person mentally incapable but not certified. A question has been raised that the title of Mrs. B is bad, and that application must be made to the court. Is there any other way out of the matter as we are anxious to avoid an application to court with its consequent expense. Would the execution by D of something in the nature of a confirmatory deed be of any use.

A. A *bona fide* sale by executors or trustees to the wife of one of them is valid, though open to suspicion (see *Sutherland Dowager Duchess* v. *Sutherland*, 1893, 3 Ch. 169). If Mrs. B was purchasing with her own money the sale having been by auction can hardly be objected to. If, however, she was

in fact purchasing with B's money the sale is liable to be set aside. If the sale is voidable on the ground last-mentioned nothing short of an order of court could make the title marketable, though a purchaser might accept a covenant of indemnity by D against the claim of all beneficiaries. If Mrs. B, who has only just bought, is now reselling, that fact would seem to be some slight evidence that the sale was not *bona fide*. If she is retaining the property it is suggested that (if the facts allow) she and B should make a statutory declaration that she is possessed of separate estate not derived from her husband, that she bought the property at public auction out of her own money on her own behalf entirely, independently from her husband. It is considered that a purchaser at a subsequent time could then safely accept a title from her.

Legal Parables.

XXII.

The Case of the Defendant in Person.

The solicitor for the police said that this was rather a bad case; but inasmuch as the defendant appeared to be unrepresented he would waive his right to make an opening speech and refrain from any comments whatsoever, in order that the defendant might realise that his interests would be in nowise prejudiced.

The chairman of the bench said that was most creditable, but no more than he expected from his long experience of the solicitor; the clerk said that the defendant might rest assured that his interests would be jealously watched by the court; and the defendant said nothing at all, but bowed and smiled.

In cross-examination, which the defendant conducted naively but shrewdly, he put several leading questions and obtained quite helpful admissions. The clerk pulled him up gently, after the mischief was done, and he apologised gracefully, adding that this was his first appearance in that court.

When he produced a doctor's certificate, an account, and a letter from a witness who was not in attendance, the police solicitor said that really, he didn't wish to hamper a defendant, but there ought to be some limits to the admission of inadmissible evidence. The clerk said: "Still, you know, he's rather at a disadvantage, being without legal assistance." The chairman said: "Do you think you need press your objection?" and the solicitor replied: "As your worship pleases."

Then the defendant made a neat, conciliatory and apologetic little speech. The bench, observing that the case was quite a proper one for investigation, dismissed it; and the chairman said that the defendant had conducted his defence with considerable ability, if allowance were made for his want of legal training.

Once again the defendant smiled and bowed his thanks.

"A chap like that might have done quite well at the bar," remarked the clerk, a little later, to an officer of the court.

"He has!" replied the official, "I suppose you didn't recognise him. That's old Bacon Brown, K.C. Of course he's better known in London than down here, and no one here seemed to spot him, especially as he was summoned as 'J. B. Brown.' He got away with it pretty well, didn't he?"

In the end, the clerk, who took some time to cool down, decided not to say anything to anybody about it. 'But," he said, "in future I'll see defendants in person in" (well, never mind where) "before I lift a finger to help them!"

The Rt. Hon. Sir Lawrence Hugh Jenkins, K.C.I.E., of Marchwood-crescent, Ealing, W., at one time Chief Justice of Calcutta and a member of the Judicial Committee of the Privy Council, who died on 1st October, aged sixty-nine, left £23,761.

Notes of Cases.

Court of Appeal.

Legge *v.* Legge.

Lord Hanworth, M.R., and Russell, L.J. 13th December, 1928.

Divorce—Practice—Application for Leave to Present Petition for Permanent Maintenance Out of Time—Discretion of the Court—Matrimonial Causes Rules, 1924, r. 65A.

Scott *v.* Scott, 1921, P. 107, *Considered.*

This was an appeal by a divorced wife against a decision of Hill, J., given *ex parte* in chambers, refusing her application, dated 7th November, 1928, for leave to file a petition for permanent maintenance against her former husband, the decree absolute of dissolution of the marriage having been pronounced on the 17th November, 1924. The fact that the applicant was a guilty respondent was not relevant to the present appeal. Hill, J., held that, as there had been a lapse of four years, in view of the decision in *Scott* v. *Scott*, 1921, P. 107, he had no discretion to exercise in the matter.

Lord Hanworth, M.R., in the course of his judgment, said that Mr. Justice Hill, looking perhaps rather strictly at the decision in *Scott* v. *Scott*, *supra*, had held that the application was out of time, and that therefore he could not exercise the jurisdiction asked. In his (the Master of the Rolls) judgment, *Scott* v. *Scott*, *supra*, did not prevent the application being considered. That case said no more than that in the circumstances there was no ground for giving leave to apply after the lapse of seven years, and that the other circumstances did not overcome the inference to be drawn from the lapse of so long a time. It appeared to the court that all the circumstances should be considered on an application under r. 65A of the Divorce Rules. The appeal must be allowed and the case must go back to Mr. Justice Hill to deal with by reference to all the circumstances and to exercise his discretion whether or not the application should be allowed.

Russell, L.J., agreed.

Counsel: *Sir Patrick Hastings*, K.C., and *T. J. O'Connor*, for the appellant; *Noel Middleton*, for the respondent.

Solicitors: *J. C. Fox, Gamble & Son; R. A. Newton.*

[Reported by J. F. Compton-Miller, Esq., Barrister-at-Law.]

Grant *v.* Derwent.

Lord Hanworth, M.R., Lawrence and Russell, L.JJ. 14th December, 1928.

Sewers—Drainage—Connection of Drain with Sewer—Alleged Trespass to Sub-soil of Private Owner—Connection made by Local Authority at the Request of Owner of Drain—No Trespass by Owner of Drain—Public Health Act, 1875 (38 & 39 Vict., c. 55), s. 21—Public Health Acts Amendment Act, 1890 (53 & 54 Vict., c. 59), s. 18—Wimbledon Corporation Act, 1914 (4 & 5 Geo. 5, c. clxiv), ss. 81, 82, and 84.

The defendant, who owned certain houses in Wimbledon, asked the Wimbledon Corporation to connect the drain into which those houses drained with the public sewer. This was done, but it involved carrying the connecting pipes through a road the sub-soil of which was alleged by the plaintiff to be his property. The plaintiff brought an action against the defendant, *inter alia*, for trespass upon his sub-soil, contending that the defendant was responsible for the trespass, as having requested the local authority to do the work. He also contended that the defendant had adopted and ratified the act done by the local authority on his behalf. Astbury, J., dismissed the action. The plaintiff appealed.

Lord Hanworth, M.R., dismissing the appeal, said that the defendant was within his rights in asking the local authority to make the necessary connection. They did this under the provisions of s. 18 of the Public Health Acts Amendment

Act of 1890, or the similar provisions of the Wimbledon Corporation Act, 1914, and the defendant paid for the work. But, even if a trespass had been committed, the defendant was not liable, for the act was the act of the local authority, and it could not be said that, acting as they did under their statutory powers, they had done the work as the servants or agents of the defendant, so that he could ratify their action and thereby render himself liable.

COUNSEL: *Naldrett*, K.C., and *G. D. Johnson*, for appellant; *Archer*, K.C., and *R. Glen*, for respondent.

SOLICITORS: *Vivash Robinson & Co.; Taylor, Willcocks and Co.*

[Reported by G. T. WHITFIELD-HAYES, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Evans *v.* **James Webster and Bros., Ltd.**

Wright, J. 6th December, 1928.

SHIPPING—SHORT SHIPPED AND DAMAGED TIMBER—CLEAN BILL OF LADING—PROTEST—INNOCENT INDORSEE OF BILL OF LADING—ENTITLED TO GOOD DELIVERY.

A bill of lading, dated the 28th July, 1927, and held by the defendants, as indorsees, of a quantity of timber shipped on the plaintiff's steamer at Nova Scotia for Liverpool, stated that a specific quantity of timber had been shipped in good order and condition. The timber was delivered short and a part was stained and damaged. To a claim by the plaintiff, the shipowner, for the balance of the freight, the defendants counterclaimed in respect of the short delivery and damage. Before the defendants paid for the timber shipped the plaintiff had informed them that some of the cargo was damaged, but there was nothing to show them whether it was theirs or that of other shippers on the vessel. The charter-party provided, *inter alia*, that the bill of lading should be conclusive evidence against the owners as establishing the aggregate number of pieces delivered to the steamer, and that the bills of lading should be signed by the master. The master noticed the bad condition of some of the cargo when it was loaded, and although signing a clean bill of lading he also signed a protest.

WRIGHT, J., held that the plaintiff was estopped from disputing the statement in the bill of lading to the effect that the defendants' timber had been shipped in good order and condition. There was not such information before the defendants as to debar them from relying on the statement in the bill of lading. The master should know that a bill of lading was a document of title transferable for value, and his protest was not of superior value to the bill of lading. On the question of short shipment, the defendants succeeded on their counter-claim because, even if the master had been induced to sign the bill of lading by fraud, the defendants were innocent indorsees. Judgment for the defendants.

COUNSEL: *A. T. Miller*, K.C., and *R. K. Chappell*, for the plaintiff; *Porter*, K.C., and *J. Dickinson*, for the defendants.

SOLICITORS: *Chas. Lightbound & Co.; Cecil Williams & Co.*, for *T. O. Ward*, Liverpool.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Home and Colonial Insurance Co., Ltd. *v.* **London Guarantee and Accident Co., Ltd.** Wright, J. 7th December, 1928.

INSURANCE—RE-INSURANCE—NO POLICIES ISSUED—MONEY PAID—CLAIM TO RECOVER IT AS MONEY PAID UNDER MISTAKE.

In 1918, the plaintiffs and the defendants, both marine insurance companies, entered into a participation agreement by which the defendants ceded to the plaintiffs some of the risks they, the defendants, had underwritten. A liquidator was appointed following a resolution on the 3rd October, 1922, to voluntarily wind up the plaintiff company, and in January, 1927, £89,000 was the agreed final balance due from the plaintiffs to the defendants, and a final dividend was paid by the plaintiffs shortly after. The plaintiff company was dissolved in September, 1927, but in January, 1928, one Walrond, late chairman of the plaintiff company, became aware of certain recent legal decisions to the effect that a liquidator was justified in rejecting claims under a re-insurance agreement if no stamped policies had been issued as required by the Stamp Act, 1891, s. 93, and the Marine Insurance Act, 1906, s. 22. In view of that information, and no stamped policies having been issued in the present case, the plaintiffs sought to recover the money paid to the defendants as having been paid under mistake.

WRIGHT, J., said that upon the authorities a plaintiff, to be entitled to recover money alleged to have been paid under mistake of fact, must establish that the mistake was in respect of a fact which was essential to liability. In the present case the liquidator was ignorant of both the fact that policies had not been issued, and of the law requiring them. In evidence he stated that if he had been told that no policies had been issued he would still have paid the money. To recover the money the plaintiffs had to show that it was paid under mistake of fact, and nothing else, and there was no right to recover where knowledge of the fact would not have affected his conduct.

COUNSEL: *Pritt*, K.C., and *Hallett*, for the plaintiffs; *Porter*, K.C., and *Cyril Miller*, for the defendants.

SOLICITORS: *William A. Crump & Son; Middleton, Lewis and Clarke.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

C. *v.* **C.** Lord Merrivale, P. 30th July, 1928.

WIFE'S DIVORCE—RESPONDENT OF UNSOUND MIND—PETITION FOR PERMANENT MAINTENANCE AND SECURITY—CURRENT ORDER IN LUNACY MAKING PROVISION FOR WIFE—FORM OF ORDER OF THE DIVORCE COURT CHARGING RESPONDENT'S ESTATE—LAW OF PROPERTY ACT, 1925, 15 Geo. 5, c. 20, s. 171.

Summons adjourned into court for judgment. A wife petitioner applied for an order for security in respect of permanent maintenance in the following circumstances. Pending the proceedings for dissolution a receiver in lunacy had been appointed to the respondent's estate, and by an order in lunacy £250 per annum had been assigned out of the estate for the respondent's maintenance, together with £156 per annum for the wife and £52 per annum for the child of the marriage up to the age of sixteen. These sums in fact exceeded the income from the estate, and capital had to be resorted to from time to time. Notwithstanding the wife petitioned for permanent maintenance, and by order of the Master in Lunacy an answer was filed by the receiver, on behalf of the husband, submitting that no order for permanent maintenance could be made by reason of the receivership. The wife was, in effect, satisfied with the apportionment under the order in lunacy, but pressed that maintenance might be secured to her in some way out of the respondent's estate. The registrar declined to make an order on the petition and the wife appealed.

Lord MERRIVALE, P., said that though the order in lunacy was in force, the wife was not entirely secured by it, since if the patient recovered his mental capacity, or died, the wife might be left unprovided for. The jurisdiction in lunacy ought never to be interfered with from outside, or encroached upon, but it had never been held to exclude the courts from enforcing the statutory or common law rights of persons having lawful claims. His lordship referred to *Davis* v. *Davis*, 2 D. M. & G. 51; *In re Tuer's Will Trusts*, 32 Ch. D. 39; *Horne* v. *Pountain*, 23 Q.B.D. 264; and *In re Lenvesley*, 1891, 2 Ch. 1. The court had to consider whether the wife was entitled to an order making provision for her outside of the provision made for her under the powers of the Lords Justices

in Lunacy and operative in the event of the recovery or death of the patient. He thought that the provision of £3 per week made by the Master in Lunacy for the wife was a proper provision, and the husband should be ordered to secure that allowance to the wife without prejudice to all orders made or to be made by the Lords Justices or Masters in Lunacy in respect of the respondent's estates and maintenance. The charge to be so created should not be enforceable whilst the order in lunacy subsisted, and, if that order continued in force during the whole of the husband's life, the charge would become enforceable upon his death. Difficulty might arise as to the execution of the charge, and it might be necessary to invoke the jurisdiction of the Lords Justices under s. 171 of the Law of Property Act, 1925. The question of the wife's costs would be reserved, as the management of the husband's estate was in the receiver in lunacy.

COUNSEL: *H. D. Durley Grazebrook* for the wife. (The Solicitor for the Receiver in Lunacy was heard *contra*.)

SOLICITORS: *Jacques & Co.* for *Richardson & Parker*, Scarborough; *Burton, Yates & Hart* for *Hart, Jackson & Sons*, Ulverston.

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Gribble *v.* **Gribble.** Bateson, J. 18th January.

DIVORCE—WIFE'S PETITION UNDER THE POOR PERSONS RULES—SPECIAL CIRCUMSTANCES—ORDER AT HEARING GRANTING SOLICITOR PROFIT COSTS—POOR PERSONS RULES, 1925, r. 31B.

At the hearing of this undefended petition for dissolution, brought under the Poor Persons Rules, counsel for the wife petitioner applied for a special order for costs under Poor Persons Rule 31B, which is as follows:—

"Costs ordered to be paid to a poor person shall be taxed. In taxing such costs the Taxing Master may allow any out-of-pocket expenses (but not office expenses) properly incurred in the course of the proceedings. Where it appears to the court or a judge that the special circumstances of the case require it, the court or a judge may order that such costs shall include profit, costs and charges, but not any fees to counsel."

The respondent was formerly an inspector in the service of the London General Omnibus Company and married the petitioner in February, 1926. Evidence was given by affidavit of the respondent's adultery in New Zealand in September, 1926. It was alleged that the respondent had taken the woman named in the petition out to New Zealand in the summer of that year. Counsel said that it was a monstrous thing that a man who could afford to go with another woman to New Zealand and live with her out there should be let off paying the costs of his wife's solicitors. He submitted that there were "special circumstances" to bring the case within r. 31B, and to justify the court in ordering profit costs. Such an order would not necessarily be executed in the present case, but he made the submission in order to draw attention to a matter of public interest and for guidance in future similar cases where services were given by the legal profession gratuitously on the assumption that the husbands had no means with which to pay ordinary costs.

BATESON, J., pronounced a decree *nisi*, and in making an order for profit costs, said that the special circumstances in the case were that it appeared that the man was well able to pay. He left his wife apparently on good terms and went off with another woman to New Zealand and paid her passage and his own.

COUNSEL: *Bucknill*, for the petitioner.

SOLICITORS: *Collyer-Bristow & Co.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Mr. James Henry Rennoldson, of Ingleside, Westoe, South Shields, solicitor and notary public, a county magistrate, who died on 22nd September, left estate of the value of £107,316.

Societies.

London Association of Accountants.

CERTIFIED ACCOUNTANTS.

The 1929 edition of the Certified Accountants' Year Book has just been issued by the London Association of Accountants, from which it appears that at the date of compilation the membership of the Association numbered 2,819. The topographical list of members reveals the fact that certified accountants are to be found not only throughout the United Kingdom, but in all parts of the British Empire and in foreign countries. Included in the figure quoted are fifty-six lady members, of whom several are in public practice. In addition to complete alphabetical and topographical lists of members, the contents of the Year Book, which runs to 566 pages, include full particulars regarding the examinations and membership of the Association, copies of papers set at recent examinations, articles of association, bye-laws and particulars of the Certified Accountants' Benevolent Association.

The London Association of Accountants has entered upon the twenty-fifth year of its existence, having been incorporated in January, 1905.

Law Students' Debating Society.

At a meeting of the Society held at The Law Society's Hall, on Tuesday, the 15th inst. (Chairman, Mr. H. M. Pratt), the subject for debate was "That this House deplores the decision of the House of Lords in the case of *Medway Oil & Storage Co. Ltd.* v. *Continental Contractors Ltd.*, 45 T.L.R. 20 (Costs—Taxation—Dismissal of Claim and Counter-claim)." Mr. L. F. Sturge opened in the affirmative; Mr. Godfrey Roberts seconded in the affirmative. Mr. Donald Geddes opened in the negative; Miss G. O. D. Petersen seconded in the negative. The following members also spoke: Messrs. H. Shanly and E. G. M. Fletcher. The opener having replied, the motion was lost by eight votes. There were twenty members present.

Rules and Orders.

[1]THE PUBLIC HEALTH (PRESERVATIVES, &C., IN FOOD) REGULATIONS MADE BY THE MINISTER OF HEALTH.

Being Regulations made by the Minister of Health on the 4th August, 1925, in the exercise of the powers conferred upon him by the Public Health Act, 1875,(*a*) the Public Health (London) Act, 1891,(*b*) the Public Health Act, 1896,(*c*) the Public Health (Regulations as to Food) Act, 1907,(*d*) and the [2]Butter and Margarine Act, 1907,(*e*) and of every other power enabling him in that behalf, with the consent of the Commissioners of Customs and Excise, so far as they apply to the Officers of Customs and Excise.

Printed as amended by Regulations dated December 10, 1926, and June 25, 1927.

PART I.

General.

1. These Regulations may be cited as [1]the Public Health (Preservatives, &c., in Food) Regulations, and shall come into operation on the 1st day of January, 1927:

[3]Provided that—

(i) the Regulations shall come into operation on the 1st day of July, 1927, so far as they relate to bacon, ham and egg yolk, and on the 1st day of January, 1928, so far as they relate to butter and cream and to the revocation of such of the provisions of the Public Health (Milk and Cream) Regulations, 1912,(*f*) and the Public Health (Milk and Cream) Regulations, 1912, Amendment Order, 1917,(*g*) as relate to cream; and

(ii) so far as the Regulations prohibit the [4]manufacture for sale or sale of an article of food containing any

(*a*) 38-9 V. c. 55. (*b*) 54 5 V. c. 76.
(*c*) 59 60 V. c. 20. (*d*) 7 E. 7. c. 32.
(*e*) 7 E. 7. c. 21. (*f*) S.R. & O. 1912, No. 1152.
(*g*) S.R. & O. 1917, No. 141.

(1) Article 3 of the Public Health (Preservatives &c., in Food) Amendment Regulations, 1926 (S.R. & O. 1926, No. 1557) provides as follows:—

"Copies of the Public Health (Preservatives &c., in Food) Regulations, 1925, printed under the authority of His Majesty's Stationery Office, may be printed with any additions, omissions or substitutions directed to be made by these or any other amending regulations, but with a footnote in each instance referring to such amending regulations; and the principal regulations so printed may be cited as the Public Health (Preservatives, &c., in Food) Regulations."

The alterations made by amending Regulations are those referred to in the footnotes in this print.

(2) So far as the Regulations were made under this Act, which is repealed by the Food and Drugs (Adulteration) Act, 1928 (operating from the 1st January, 1929), they are continued in operation by section 37 of that Act.

(3) Amended form of proviso substituted by Regulations of 1926.

(4) Words "manufacture for sale or" added by Regulations of 1927.

preservative which is necessarily introduced by the use in its preparation of preserved margarine, preserved egg yolk, preserved bacon, preserved ham, preserved cream, or preserved butter, they shall come into operation on the following dates, viz. :—

(*a*) the 1st day of July, 1927, when the preservative has been so introduced by the use of preserved margarine ;

(*b*) the 1st day of January, 1928, where the preservative has been so introduced by the use of preserved bacon, preserved ham, preserved egg yolk or preserved cream ; and

(*c*) the 1st day of July, 1928, where the preservative has been so introduced by the use of preserved butter.

[5](iii) the Regulations shall not apply to the sale of pearl barley until the 1st day of January, 1928.

2. (1) In these Regulations unless the context otherwise requires—

" The Minister " means the Minister of Health ;

" Local Authority " means any local authority authorised to appoint an analyst for the purposes of the [6]Sale of Food and Drugs Acts, 1875 to 1907, and " public analyst " means an analyst so appointed ;

" Officer of Customs and Excise " includes any person acting under the authority of the Commissioners of His Majesty's Customs and Excise ;

" Food " means food or drink intended for human consumption ;

" Cream " means that portion of milk rich in milk-fat which has been separated by skimming or otherwise and is intended for human consumption ;

" Preservative " means any substance which is capable of inhibiting, retarding or arresting the process of fermentation, acidification, or other decomposition of food or of masking any of the evidences of putrefaction ; but does not include common salt (sodium chloride), saltpetre (sodium or potassium nitrate), sugars, [7]lactic acid, acetic acid or vinegar, [8]glycerine, alcohol or potable spirits, herbs, hop extract, spices and essential oils used for flavouring purposes or any substance added to food by the process of curing known as smoking ;

" Thickening substance " means sucrate of lime, gelatine, starch paste or any other substance, which when added to cream is capable of increasing its viscosity but does not include cane or beet sugar ;

" Sulphur dioxide " includes sulphites, and " benzoic acid " included benzoates ;

" Sell " includes expose or offer for sale or deposit in any place for the purposes of sale, and " sale " shall be construed accordingly ;

" Importer " includes any person who, whether as owner, consignor or consignee, agent or broker, is in possession of or in anywise entitled to the custody or control of any article of food brought from a place situate outside Great Britain, Ireland, the Channel Islands and the Isle of Man ; and " import " shall be construed accordingly ;

(2) Percentages shall be calculated by weight.

(3) Sulphites shall be calculated as sulphur dioxide (SO_2) and benzoates as benzoic acid (C_6H_5COOH).

(4) The Interpretation Act, 1889,(*h*) applies to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

Part II.

Sale of Articles of Food and Preservatives.

3. The Local Authority and every officer of a Local Authority authorised in writing by the Authority shall enforce and execute this Part of these Regulations, and for this purpose shall make such enquiries and take such other steps as may seem to them or him to be necessary for securing the due observance of this Part of the Regulations in the district of the local authority.

4.—(1) No person shall manufacture for sale or sell any article of food which contains any added preservative or [9]any added colouring matter being one of those specified in Part II of the First Schedule to these Regulations :

Provided that—

(i) any article of food specified in Part I of the said Schedule may contain preservative of the nature and in the proportion therein specified :

(ii) where an article of food specified in Part I of the said Schedule [10]otherwise than in item 4 thereof is used in the preparation of any other article of food, the latter article may contain any preservative necessarily introduced by the use of the former article, but the total proportion of any one preservative contained in any article of food specified in that Part of the Schedule shall not exceed the proportion therein specified.

[11](iii) The provisions of this Article shall not apply so as to prohibit the presence of sulphur dioxide in any article of food other than meat if it is shown either—

(*a*) that the article not being an article specified in Part I of the said Schedule is intended to be used in the preparation of an article which is so specified, or

(*b*) that the article being itself an article so specified, other than fruit or fruit pulp, is intended to be so treated before it is sold or exposed for sale by retail as to comply with the provisions of the Schedule as regards the proportion of sulphur dioxide contained.

[12](2) The following provisions shall have effect with respect to any of the articles of food mentioned in paragraph 1 of the Second Schedule to these Regulations which contains any preservative specified in Part I of the First Schedule as permissible in the case of such article, that is to say—

(*a*) A person who exposes or offers any such article for sale by retail shall at the time when it is so exposed or offered either cause the article to be labelled in accordance with the Rules set out in the said Second Schedule, or cause a notice to the effect that the article contains preservative to be exhibited in a conspicuous place so as to be easily readable by a customer ; and

(*b*) A person who sells any such article shall cause it to be labelled in accordance with the said Rules at the time when it is delivered to any purchaser, agent or broker :

Provided that—

(i) Neither the requirement mentioned in paragraph (*a*) nor that mentioned in paragraph (*b*) shall apply where the article is exposed or offered for sale by retail or delivered to a customer in a hotel, restaurant or other such place for consumption on the premises ; and

(ii) The requirement mentioned in paragraph (*b*) shall not apply where the article is sold by retail and delivered to the purchaser at the vendor's premises or stall if such a notice as is mentioned in paragraph (*a*) is there exhibited as provided in that paragraph.

(3) No person shall sell cream which contains any thickening substance.

5.—(1) No person shall sell any article which is recommended in any mark or label placed thereon or on its receptacle or container for use as a preservative of, or colouring matter for, any article of food or is described or referred to in any such mark or label in terms likely to lead to its being so used—

(i) if such use would be contrary to these Regulations ; or

(ii) if in the case of a preservative, it is not labelled in accordance with the Rules set out in the Second Schedule to these Regulations.

(2) No person shall on or in connection with the sale of any article or in any advertisement, circular or notice relating thereto recommend it for use as a preservative of, or colouring matter for, any article of food, or describe or refer to it in terms likely to lead to its being so used, if such use would be contrary to these Regulations.

(3) No person shall sell any article which is recommended in any such mark or label as aforesaid for use as a thickening substance for cream or is described or referred to in any such mark or label in terms likely to lead to its being so used, and no person shall on or in connection with the sale of any article or in any advertisement circular or notice relating thereto recommend it for use as a thickening substance for cream or describe or refer to it in terms likely to lead to its being so used.

6.—(1) Any officer authorised by the Minister and any officer of the Local Authority acting in the execution of these Regulations shall have power to enter at all reasonable times any premises where articles to which these Regulations apply are prepared, packed, labelled or stored.

(2) The officer may take samples of any such article or of any substance used or capable of being used in the preparation of any such article and of any labels designed to be affixed to any such article or to any package or other receptacle containing such article, but shall if so required make reasonable payment for any samples so taken.

(*h*) 52 & 53 Vict. c. 63.

(5) Proviso (iii) added by Regulations of 1927.

(6) These Acts are repealed by the Food and Drugs (Adulteration) Act, 1928, and the joint effect of that Act and this definition is that the expression " Local Authority " in these Regulations means a Food and Drugs Authority as defined in that Act.

(7) Words " lactic acid " added by Regulations of 1927.

(8) Word " glycerine " added by Regulations of 1926.

(9) Words " any added colouring matter being one of those " substituted by Regulations of 1927 for words " any of the colouring matters."

(10) Words " otherwise than in item 4 thereof " added by Regulations of 1927.

(11) Proviso (iii) added by Regulations of 1927.

(12) Amended form of sub-division (2) substituted by Regulations of 1926.

[13](3) Where a sample is taken of an article to which these Regulations apply, the Sale of Food and Drugs Acts, 1875 to 1907, shall apply as if the officer were an officer authorised to procure samples thereunder; and where an anlysis is required for the purposes of these Regulations, the provisions of Section 14 of the Sale of Food and Drugs Acts, 1875,(*i*) as amended by Section 13 of the Sale of Food and Drugs Act, 1899, (*j*) shall apply.

7. Where it appears to any authority or officer whose duty it is to enforce these Regulations that an article has been sold within the district of the authority contrary to the provisions of Article 4 or 5 of these Regulations, the authority or officer may, instead of or in addition to taking proceedings against the seller, take proceedings against any previous seller of the article notwithstanding that the sale by such previous seller took place outside the district of the authority, and for the purpose of any such proceedings the sale by the previous seller shall be deemed to have taken place within the district of the authority and the proceedings may be taken either before a Court having jurisdiction within that district or before a Court having jurisdiction in the place where the sale actually took place.

PART III.

Importation of Articles of Food.

8.—(1) Subject to any directions given by the Commissioners of Customs and Excise after consultation with the Minister, the Officers of Customs and Excise shall have power to enforce and execute this Part of these Regulations and may take such samples as may be necessary of consignments of imported articles to which these Regulations apply.

(2) Where an Officer of Customs and Excise takes a sample for the purpose of analysis he shall send the sample or a portion thereof to the Government Chemist, and either the officer or the Government Chemist shall send a portion of the sample to the importer.

9.—(1) The following authorities and any officers authorised by them in writing shall also have power to enforce and execute this Part of these Regulations, namely:—

(*a*) Where the article of food is landed from a ship or aircraft in a place which is not within the jurisdiction of a Port Sanitary Authority, or where the article is imported in a vehicle and the Customs examination of that vehicle is deferred with the consent of the Commissioners of Customs and Excise until the vehicle reaches a place outside such jurisdiction, the Council of the Borough (including the City of London and a Metropolitan Borough) or Urban or Rural District in which such place is situated.

(*b*) In every other case, the Port Sanitary Authority.

(2) Every officer authorised as aforesaid may take such samples as may be necessary of consignments of imported articles to which these Regulations apply, and where he takes a sample for the purpose of analysis he shall send the sample or a portion thereof to a public analyst and either the officer or the analyst shall send a portion of the sample to the importer.

(3) Where the duties of an Officer of Customs and Excise with regard to the examination of a cargo or consignment comprising an article of food have not been wholly discharged, a sample of that article shall not be taken without his consent, but every officer of Customs and Excise shall afford such facilities as the circumstances require for the taking of samples in pursuance of this Article.

10. If in any case the Commissioners of Customs and Excise or a Port Sanitary Authority or other authority executing this Part of these Regulations are of opinion that an offence against this Part of these Regulations has been committed, they shall communicate to the Minister for his information the name of the importer and such other facts as they may possess or may obtain as to the destination of the consignment.

11. (1) No person shall import into England or Wales any article of food intended for sale which contains any added preservative or [14]any added colouring matter being one of those specified in Part II of the First Schedule to these Regulations:

Provided that—

(i) any article of food specified in Part I of the said Schedule may contain preservative of the nature and in the proportion therein specified;

(ii) where an article of food specified in Part I of the said Schedule [15]otherwise than in item 4 thereof is used in the preparation of any other article of food, the latter article may contain any preservative necessarily introduced by the use of the former article, but the total proportion of any one preservative contained in any article of food specified in that Part of the Schedule shall not exceed the proportion therein specified.

[16](iii) The provisions of this Article shall not apply so as to prohibit the presence of sulphur dioxide in any article of food other than meat if it is shown either—

(*a*) that the article not being an article specified in Part I of the said Schedule is intended to be used in the preparation of an article which is so specified, or

(*b*) that the article being itself an article so specified, other than fruit or fruit pulp, is intended to be so treated before it is sold or exposed for sale by retail as to comply with the provisions of the Schedule as regards the proportion of sulphur dioxide contained.

(2) No person shall import into England or Wales any cream intended for sale which contains any thickening substance.

(*i*) 38–9 V. c. 63. (*j*) 62–3 V. c. 51.

(13) By reason of the provisions of the Food and Drugs (Adulteration) Act, 1928, the effect of this sub-division is that where a sample is taken of an article to which the Regulations apply, that Act will apply as if the officer were a sampling officer thereunder; and where an analysis is required for the purposes of the Regulations, the provisions of sub-section (1) of Section 18 of that Act will apply.

(14) Words "any added colouring matter being one of those" substituted by Regulations of 1927 for words "any of the colouring matters."

(15) Words "otherwise than in item 4 thereof" added by Regulations of 1927.

(16) Proviso (iii) added by Regulations of 1927.

(To be continued.)

Legal Notes and News.

Honours and Appointments.

The Lord Chancellor has appointed Mr. HERBERT FREDERICK BLAKE to be a Taxing Master of the Supreme Court to fill the vacancy caused by the resignation of Master Bloxam.

The King has been pleased, on the recommendation of the Secretary of State for Scotland, to approve the appointment of Mr. ALEXANDER MAITLAND, K.C., as Sheriff of Caithness Orkney and Zetland, in the room of Mr. James Campbell Pitman, K.C., who was recently appointed one of the Senators of His Majesty's College of Justice in Scotland, in the room of the late Lord Constable.

Mr. WILLIAM HOOTON CARLILE, Solicitor and Notary Public, Doncaster (the Deputy-Coroner), has been appointed Coroner for the Doncaster District (W.R.Y.) Mr. Carlile was admitted in 1913.

Mr. GORDON LUMSDAINE SIMPSON, Solicitor, District Probate Registrar, York, has also been appointed District Probate Registrar of the Wakefield District.

Mr. J. R. HOWARD ROBERTS, Solicitor, Deputy Town Clerk of Liverpool, has been appointed Town Clerk of Hull. Mr. Roberts was admitted in 1913.

Mr. JAMES B. ANNETT, Solicitor, Morpeth, has been appointed Clerk to the Morpeth Board of Guardians and Rural District Council in succession to the late Mr. H. W. Sample. Mr. Annett was admitted in 1913.

Mr. JOHN F. HARLOW, Solicitor, has been appointed Clerk to the Wandsworth Board of Guardians. Mr. Harlow was Deputy-Clerk for some years, and has been Acting Clerk since the death of his predecessor Mr. Henry Phillips.

The Lord Advocate has appointed Mr. WILLIAM TENNANT, W.S., Lanark, to be Procurator Fiscal, Lanark, to fill the vacancy caused by the resignation of Mr. T. Tennant.

Mr. E. J. DALY, of the Ottawa Bar, has been appointed Judge of the County Court for the County of Carleton in succession to the late Judge Mulligan. Mr. Daly has practised in Ottawa for the last twenty-five years, and the appointment has been well received.

Alderman SIDNEY HERBERT CLAY, J.P., Solicitor, Sheffield, Worksop and East Retford, has been re-elected Mayor of the Borough of East Retford. This is Alderman Clay's fourth year in the mayoral chair. He was admitted a Solicitor in 1894.

Councillor J. W. A. OLLARD, Solicitor, Wisbech, has been elected Mayor of that borough. He is a member of the firm of Ollard & Ollard of that town, and was admitted in 1919.

Professional Announcements.

(2s. per line.)

Mr. ALFRED KING-HAMILTON, a solicitor now practising at 41, Barbican, E.C.1, and at 3, Newman's Court, Cornhill, E.C.3, in order to avoid confusion, wishes to draw attention to the fact that he is not connected with the business carried on by Mr. E. L. Green under the style of "King-Hamilton and Green," at 116, Charing Cross-road, W.C.2. He ceased to be a member of that firm on the **30th September, 1923.**

Messrs. TOULMIN, WARD & Co., of 41, North John Street, Liverpool, have taken into partnership as from the 1st July, 1928, Mr. Joseph Parkin, Hodgson, LL.B. The name of the firm will remain unchanged.

Wills and Bequests.

Mr. Stephen Hardcastle Clarke, solicitor, of 25 John-street, Sunderland, who died on 26th August last, aged sixty-three years, left estate of the gross value of £6,896 18s. 10d., with net personalty nil.

Mr. John Powell Jones Powell, solicitor (57), of Castle-street, Brecon, left estate of the gross value of £9,583.

Mr. John O'Connor, K.C., of Frognal-mansions, Hampstead, M.P. for South Tipperary, 1885-1892, and North Kildare, 1905-1918, who died on 27th October, left £20,140, with net personalty £20,095. He left: £2,000 to the Cancer Hospital, Fulham-road, "in grateful remembrance of service once rendered to a dear relation"; £100 to his former clerk, William Yarnold; £3,000 to the Christian Brothers Schools, Peacock-lane, Cork; £1,000 to the Novitiate of the Christian Brothers Marino, St. Mary, Clontarf, Dublin; and £300 each to Joseph Nolan, "ex-M.P.," William Archer Redmond, John Clancy, K.C., and Joseph Devlin, "ex-M.P."

"RED REAR LIGHTS ON BICYCLES."

The chairman of the Wimbledon magistrates recently criticised the police during the hearing of a summons against a boy of fourteen for not having a red rear light or reflector on his bicycle.

"Why don't you bring the men here?" he asked. "You can see men riding three abreast on Wimbledon Bridge without any rear light. This is a danger to the riders themselves and to pedestrians. I think it is a scandal that there are not dozens of men here for this sort of thing. I have seen policemen looking at them."

The boy's employer was fined £1 for aiding and abetting in the offence.

CLAIM BY AN EX-SOLICITOR.

The distribution of a sum of £1,000 (being damages recovered by Rueben Nelson Jones, a former Birmingham solicitor, and an undischarged bankrupt) was decided by consent at Birmingham County Court.

The matter arose on the application of Jones for an order in regard to the £1,000, declaring what part, if any, should be paid to the Official Receiver for distribution among the creditors, and for a declaration that the remainder, or the whole, should be deemed to be the property of the debtor. The application was heard in October, when Judge Dyer reserved judgment.

Mr. Wylie, for the Official Receiver, who was the respondent in the action, now stated that his honour would not be troubled to give judgment, as the matter had been settled subject to the judge's consent. It would be recalled that an offer had been made to the applicant, and the matter went on until the previous night, when applicant decided to accept. The terms suggested were that the money in the bank, £900 (a sum of £100 having already been handed to applicant), should be released to the Official Receiver, upon which £75 should be handed to the applicant. Of the £250 originally offered a further £75 would remain, out of which the Official Receiver's taxed costs would be paid, any balance of the £75 to be handed to Jones.

The application was withdrawn on the terms indicated.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	Emergency Rota.	Appeal Court No. 1.	Mr. Justice Eve.	Mr. Justice Romer.
M'nd'y Jan. 28	Mr. Hicks Beach	Mr. Ritchie	Mr. More	Mr.*Hicks Beach
Tuesday .. 29	Blaker	Bloxam	Hicks Beach	Bloxam
Wednesday 30	More	Jolly	Bloxam	*More
Thursday .. 31	Ritchie	Hicks Beach	More	Hicks Beach
Friday Feb. 1	Bloxam	Blaker	Hicks Beach	*Bloxam
Saturday .. 2	Jolly	More	Bloxam	More
	Mr. Justice Maugham.	Mr. Justice Astbury	Mr. Justice Tomlin.	Mr. Justice Clauson.
M'nd'y Jan. 28	Mr. Bloxam	Mr. Jolly	Mr. Ritchie	Mr. Blaker
Tuesday .. 29	*More	Ritchie	*Blaker	*Jolly
Wednesday 30	*Hicks Beach	Blaker	Jolly	*Ritchie
Thursday .. 31	*Bloxam	Jolly	*Ritchie	*Blaker
Friday Feb. 1	More	Ritchie	Blaker	*Jolly
Saturday .. 2	Hicks Beach	Blaker	Jolly	Ritchie

* The Registrar will be in Chambers on these days, and also on the days when the Courts are not sitting.

VALUATIONS FOR INSURANCE.—It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is generally very inadequately insured, and in case of loss insurers suffer accordingly. **DEBENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert valuers, and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs, furniture, works of art, bric-a-brac a speciality.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 4½%. Next London Stock Exchange Settlement Thursday, 7th February, 1929.

	Middle Price 23rd Jan.	Interest Yield.	Yield with Redemption.
English Government Securities.		£ s. d.	£ s. d.
Consols 4% 1957 or after	88	4 11 0	—
Consols 2½%	56½	4 8 6	—
War Loan 5% 1929-47	102⅝	4 17 6	4 17 6
War Loan 4½% 1925-45	99	4 11 0	4 13 6
War Loan 4% (Tax free) 1929-42	101⅛	3 19 0	3 19 6
Funding 4% Loan 1960-1990	91¼	4 8 0	4 10 6
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years	95½	4 4 0	4 7 6
Conversion 4½% Loan 1940-44	99¾	4 10 0	4 11 6
Conversion 3½% Loan 1961	80½	4 7 6	—
Local Loans 3% Stock 1921 or after	65¾	4 12 0	—
Bank Stock	263	4 11 0	—
India 4½% 1950-55	92	4 18 0	5 1 6
India 3½%	71½	4 18 0	—
India 3%	61½	4 18 0	—
Sudan 4½% 1939-73	95	4 14 9	4 15 0
Sudan 4% 1974	87	4 12 0	4 17 0
Transvaal Government 3% 1923-53 (Guaranteed by British Government, Estimated life 19 years)	84	3 11 6	4 8 0
Colonial Securities.			
Canada 3% 1938	86¼	3 9 6	4 16 0
Cape of Good Hope 4% 1916-36	94	4 5 0	4 19 6
Cape of Good Hope 3½% 1929-49	82	4 5 6	4 18 6
Commonwealth of Australia 5% 1945-75	98	5 2 0	5 2 0
Gold Coast 4½% 1956	97	4 13 0	4 17 6
Jamaica 4½% 1941-71	97	4 13 0	4 17 6
Natal 4% 1937	94½	4 5 0	5 0 0
New South Wales 4½% 1935-45	91	4 19 0	5 6 0
New South Wales 5% 1945-65	98¼	5 2 0	5 3 0
New Zealand 4½% 1945	98	4 12 0	4 17 6
New Zealand 5% 1946	103	4 17 0	4 16 0
Queensland 5% 1940-60	99½	5 1 0	5 0 0
South Africa 5% 1945-75	104	4 16 0	4 16 0
South Australia 5% 1945-75	98	5 2 0	5 2 0
Tasmania 5% 1945-75	100	5 0 0	5 0 0
Victoria 5% 1945-75	98	5 2 0	5 0 0
West Australia 5% 1945-75	98	5 2 0	5 2 6
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corporation	64	4 13 6	—
Birmingham 5% 1946-56	104	4 16 0	4 15 0
Cardiff 5% 1945-65	103	4 17 0	4 16 6
Croydon 3% 1940-60	72	4 3 6	4 16 0
Hull 3½% 1925-55	79	4 8 6	5 0 0
Liverpool 3½% Redeemable at option of Corporation	75	4 13 6	—
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	54½	4 12 0	—
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	66	4 11 0	—
Manchester 3% on or after 1941	64	4 14 0	—
Metropolitan Water Board 3% 'A' 1963-2003	66	4 11 0	4 12 6
Metropolitan Water Board 3% 'B' 1934-2003	67½	4 9 0	4 12 6
Middlesex C. C. 3½% 1927-47	83	4 5 0	4 17 0
Newcastle 3½% Irredeemable	73	4 16 0	—
Nottingham 3% Irredeemable	64½	4 13 0	—
Stockton 5% 1946-66	102	4 18 0	4 19 0
Wolverhampton 5% 1946-56	103	4 17 0	4 19 9
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	83¼	4 16 0	—
Gt. Western Rly. 5% Rent Charge	100	5 0 0	—
Gt. Western Rly. 5% Preference	99	5 2 0	—
L. & N. E. Rly. 4% Debenture	79	5 1 3	—
L. & N. E. Rly. 4% Guaranteed	76	5 5 3	—
L. & N. E. Rly 4% 1st Preference	64	6 5 0	—
L. Mid. & Scot. Rly. 4% Debenture	82	4 17 0	—
L. Mid. & Scot. Rly. 4% Guaranteed	81½	4 18 0	—
L. Mid. & Scot. Rly. 4% Preference	74½	5 7 6	—
Southern Railway 4% Debenture	82	4 17 6	—
Southern Railway 5% Guaranteed	101	4 19 0	—
Southern Railway 5% Preference	95	5 5 3	—

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